No: 126835

In the Supreme Court of Illinois

In re Marriage of	)	**Appeal from the Circuit Court of**
	)	**Cook County, Illinois,**
Betsy Dynako,	)	**Domestic Relations Division**
Petitioner-Appellant	)	
	)	**No. 2015 D 002531**
and	)	
	)	**Hon. Judge David Haracz,**
Stephen Dynako,	)	**Presiding**
Respondent-Appellee	)	

BRIEF AND APPENDIX OF RESPONDENT-APPELLANT STEPHEN DYNAKO

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Oral Argument Requested

E-FILED
4/28/2021 4:19 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

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NATURE OF THE CASE

In a post-decree proceeding, Respondent Stephen Dynako ("Stephen") brought a petition seeking modification of the maintenance obligation to Betsy Dynako contained in the Judgment for Dissolution of Marriage. The court ruled that it is barred from modifying maintenance by Section 502(f) of the Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/502(f). This appeal is taken from the opinion of the Illinois Appellate Court, First District, affirming that ruling. No questions are raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

Whether Section 502(f) of the Illinois Marriage and Dissolution of Marriage Act bars the court from modifying maintenance where a settlement agreement does not provide that maintenance is non-modifiable in amount, duration, or both.

JURISDICTION

This is an appeal pursuant to Supreme Court Rule 301 from a final judgment entered on September 17, 2019, C197, disposing of all issues raised by Stephen's Petition to Modify Maintenance, C111-116. The notice of appeal was filed on October 15, 2019, C223, within the 30-day time limit established by Supreme Court Rule 303. Pursuant to the order of the Supreme Court of Illinois entered on March 24, 2021, granting him leave to appeal, Respondent/Appellant Stephen Dynako, by his attorney August Staas, appeals the Opinion of the Appellate Court of Illinois, First District, Fourth Division, entered on December 3, 2020, 2020 Ill.App.(1st) 192116.

STATUTES INVOLVED

This case involves the interpretation of portions of 750 ILCS 5/502(f), 750 ILCS 5/504, and 750 ILCS 5/510.

750 ILCS 5/502(f) provides, in pertinent part:

Sec. 502. Agreement.

(a) To promote amicable settlement of disputes between parties to a marriage attendant upon the dissolution of their marriage, the parties may enter into an agreement containing provisions for . . . maintenance of either of them . . . .

(b) The terms of the agreement, except those providing for the support and parental responsibility allocation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the agreement is unconscionable.

. . .

(f) Child support, support of children as provided in Sections 513 and 513.5 after the children attain majority, and parental responsibility allocation of children may be modified upon a showing of a substantial change in circumstances. **The parties may provide that maintenance is non-modifiable in amount, duration, or both. If the parties do not provide that maintenance is non-modifiable in amount, duration, or both, then those terms are modifiable upon a substantial change of circumstances.** Property provisions of an agreement are never modifiable. The judgment may expressly preclude or limit modification of other terms set forth in the judgment if the agreement so provides. Otherwise, terms of an agreement set forth in the judgment are automatically modified by modification of the judgment.

750 ILCS 5/504 provides:

Sec. 504. Maintenance.

(a) Entitlement to maintenance. In a proceeding for dissolution of marriage, legal separation, declaration of invalidity of marriage, or dissolution of a civil union, a proceeding for maintenance following a legal separation or dissolution of the marriage or civil union by a court which lacked personal jurisdiction over the absent spouse, a proceeding for modification of a previous order for maintenance

under Section 510 of this Act, or any proceeding authorized under Section 501 of this Act, the court may grant a maintenance award for either spouse in amounts and for periods of time as the court deems just, without regard to marital misconduct, and the maintenance may be paid from the income or property of the other spouse. The court shall first make a finding as to whether a maintenance award is appropriate, after consideration of all relevant factors, including:

(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance as well as all financial obligations imposed on the parties as a result of the dissolution of marriage;
(2) the needs of each party;

(3) the realistic present and future earning capacity of each party;

(4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;

(5) any impairment of the realistic present or future earning capacity of the party against whom maintenance is sought;

(6) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment;

(6.1) the effect of any parental responsibility arrangements and its effect on a party's ability to seek or maintain employment;

(7) the standard of living established during the marriage;

(8) the duration of the marriage;

(9) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and the needs of each of the parties;

(10) all sources of public and private income including, without limitation, disability and retirement income;

(11) the tax consequences to each party;

(12) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(13) any valid agreement of the parties; and

(14) any other factor that the court expressly finds to be just and equitable.

(b) (Blank).

(b-1) Amount and duration of maintenance. Unless the court finds that a maintenance award is appropriate, it shall bar maintenance as to the party seeking maintenance regardless of the length of the marriage at the time the action was commenced. Only if the court finds that a maintenance award is appropriate, the court shall order guideline maintenance in accordance with paragraph (1) or non-guideline maintenance in accordance with paragraph (2) of this subsection (b-1). If the application of guideline maintenance results in a combined maintenance and child support obligation that exceeds 50% of the payor's net income, the court may determine non-guideline maintenance in accordance with paragraph (2) of this subsection (b-1), non-guideline child support in accordance with paragraph (3.4) of subsection (a) of Section 505, or both.

(1) Maintenance award in accordance with guidelines. If the combined gross annual income of the parties is less than $500,000 and the payor has no obligation to pay child support or maintenance or both from a prior relationship, maintenance payable after the date the parties' marriage is dissolved shall be in accordance with subparagraphs (A) and (B) of this paragraph (1), unless the court makes a finding that the application of the guidelines would be inappropriate.

(A) The amount of maintenance under this paragraph (1) shall be calculated by taking 33 1/3% of the payor's net annual income minus 25% of the payee's net annual income. The amount calculated as maintenance, however, when added to the net income of the payee, shall not result in the payee receiving an amount that is in excess of 40% of the combined net income of the parties.

(A-1) Modification of maintenance orders entered before January 1, 2019 that are and continue to be eligible for inclusion in the gross income of the payee for federal income tax purposes and deductible by the payor shall be calculated by taking 30% of the payor's gross annual income minus 20% of the payee's gross annual income, unless both parties expressly provide otherwise in the modification order. The amount calculated as maintenance, however, when added to the gross income of the payee, may not result in the payee receiving an amount that is in excess of 40% of the combined gross income of the parties.

(B) The duration of an award under this paragraph (1) shall be calculated by multiplying the length of the marriage at the time the action was commenced by whichever of the following factors applies: less than 5 years (.20); 5 years or more but less than 6 years (.24); 6 years or more but less than 7 years (.28); 7 years or

more but less than 8 years (.32); 8 years or more but less than 9 years (.36); 9 years or more but less than 10 years (.40); 10 years or more but less than 11 years (.44); 11 years or more but less than 12 years (.48); 12 years or more but less than 13 years (.52); 13 years or more but less than 14 years (.56); 14 years or more but less than 15 years (.60); 15 years or more but less than 16 years (.64); 16 years or more but less than 17 years (.68); 17 years or more but less than 18 years (.72); 18 years or more but less than 19 years (.76); 19 years or more but less than 20 years (.80). For a marriage of 20 or more years, the court, in its discretion, shall order maintenance for a period equal to the length of the marriage or for an indefinite term.

(1.5) In the discretion of the court, any term of temporary maintenance paid by court order under Section 501 may be a corresponding credit to the duration of maintenance set forth in subparagraph (b-1)(1)(B).

(2) Maintenance award not in accordance with guidelines. Any non-guidelines award of maintenance shall be made after the court's consideration of all relevant factors set forth in subsection (a) of this Section.

(b-2) Findings. In each case involving the issue of maintenance, the court shall make specific findings of fact, as follows:

(1) the court shall state its reasoning for awarding or not awarding maintenance and shall include references to each relevant factor set forth in subsection (a) of this Section;

(2) if the court deviates from applicable guidelines under paragraph (1) of subsection (b-1), it shall state in its findings the amount of maintenance (if determinable) or duration that would have been required under the guidelines and the reasoning for any variance from the guidelines; and

(3) the court shall state whether the maintenance is fixed-term, indefinite, reviewable, or reserved by the court.

(b-3) Gross income. For purposes of this Section, the term "gross income" means all income from all sources, within the scope of that phrase in Section 505 of this Act, except maintenance payments in the pending proceedings shall not be included.

(b-3.5) Net income. As used in this Section, "net income" has the meaning provided in Section 505 of this Act, except maintenance payments in the pending proceedings shall not be included.

(b-4) Modification of maintenance orders entered before January 1, 2019. For any order for maintenance or unallocated maintenance and child support entered

before January 1, 2019 that is modified after December 31, 2018, payments thereunder shall continue to retain the same tax treatment for federal income tax purposes unless both parties expressly agree otherwise and the agreement is included in the modification order.

(b-4.5) Maintenance designation.

(1) Fixed-term maintenance. If a court grants maintenance for a fixed term, the court shall designate the termination of the period during which this maintenance is to be paid. Maintenance is barred after the end of the period during which fixed-term maintenance is to be paid.

(2) Indefinite maintenance. If a court grants maintenance for an indefinite term, the court shall not designate a termination date. Indefinite maintenance shall continue until modification or termination under Section 510.

(3) Reviewable maintenance. If a court grants maintenance for a specific term with a review, the court shall designate the period of the specific term and state that the maintenance is reviewable. Upon review, the court shall make a finding in accordance with subdivision (b-8) of this Section, unless the maintenance is modified or terminated under Section 510.

(b-5) Interest on maintenance. Any maintenance obligation including any unallocated maintenance and child support obligation, or any portion of any support obligation, that becomes due and remains unpaid shall accrue simple interest as set forth in Section 505 of this Act.

(b-7) Maintenance judgments. Any new or existing maintenance order including any unallocated maintenance and child support order entered by the court under this Section shall be deemed to be a series of judgments against the person obligated to pay support thereunder. Each such judgment to be in the amount of each payment or installment of support and each such judgment to be deemed entered as of the date the corresponding payment or installment becomes due under the terms of the support order, except no judgment shall arise as to any installment coming due after the termination of maintenance as provided by Section 510 of the Illinois Marriage and Dissolution of Marriage Act or the provisions of any order for maintenance. Each such judgment shall have the full force, effect and attributes of any other judgment of this State, including the ability to be enforced. Notwithstanding any other State or local law to the contrary, a lien arises by operation of law against the real and personal property of the obligor for each installment of overdue support owed by the obligor.

(b-8) Review of maintenance. Upon review of any previously ordered maintenance award, the court may extend maintenance for further review, extend maintenance for a fixed non-modifiable term, extend maintenance for an

indefinite term, or permanently terminate maintenance in accordance with subdivision (b-1)(1)(A) of this Section.

(c) Maintenance during an appeal. The court may grant and enforce the payment of maintenance during the pendency of an appeal as the court shall deem reasonable and proper.

(d) Maintenance during imprisonment. No maintenance shall accrue during the period in which a party is imprisoned for failure to comply with the court's order for the payment of such maintenance.

(e) Fees when maintenance is paid through the clerk. When maintenance is to be paid through the clerk of the court in a county of 500,000 inhabitants or less, the order shall direct the obligor to pay to the clerk, in addition to the maintenance payments, all fees imposed by the county board under paragraph (4) of subsection (bb) of Section 27.1a of the Clerks of Courts Act. When maintenance is to be paid through the clerk of the court in a county of more than 500,000 but less than 3,000,000 inhabitants, the order shall direct the obligor to pay to the clerk, in addition to the maintenance payments, all fees imposed by the county board under paragraph (4) of subsection (bb) of Section 27.2 of the Clerks of Courts Act. Unless paid in cash or pursuant to an order for withholding, the payment of the fee shall be by a separate instrument from the support payment and shall be made to the order of the Clerk.

(f) Maintenance secured by life insurance. An award ordered by a court upon entry of a dissolution judgment or upon entry of an award of maintenance following a reservation of maintenance in a dissolution judgment may be reasonably secured, in whole or in part, by life insurance on the payor's life on terms as to which the parties agree or, if the parties do not agree, on such terms determined by the court, subject to the following:

(1) With respect to existing life insurance, provided the court is apprised through evidence, stipulation, or otherwise as to level of death benefits, premium, and other relevant data and makes findings relative thereto, the court may allocate death benefits, the right to assign death benefits, or the obligation for future premium payments between the parties as it deems just.

(2) To the extent the court determines that its award should be secured, in whole or in part, by new life insurance on the payor's life, the court may only order:

(i) that the payor cooperate on all appropriate steps for the payee to obtain such new life insurance; and

(ii) that the payee, at his or her sole option and expense, may obtain such new life insurance on the payor's life up to a maximum level

of death benefit coverage, or descending death benefit coverage, as is set by the court, such level not to exceed a reasonable amount in light of the court's award, with the payee or the payee's designee being the beneficiary of such life insurance.
In determining the maximum level of death benefit coverage, the court shall take into account all relevant facts and circumstances, including the impact on access to life insurance by the maintenance payor. If in resolving any issues under paragraph (2) of this subsection (f) a court reviews any submitted or proposed application for new insurance on the life of a maintenance payor, the review shall be in camera.

750 ILCS 5/510 provides, in pertinent part, as follows:

Sec. 510. Modification and termination of provisions for maintenance, support, educational expenses, and property disposition.

(a) Except as otherwise provided in paragraph (f) of Section 502 and in subsection (b), clause (3) of Section 505.2, the provisions of any judgment respecting maintenance or support may be modified only as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification.

(a-5) An order for maintenance may be modified or terminated only upon a showing of a substantial change in circumstances. The court may grant a petition for modification that seeks to apply the changes made to Section 504 by this amendatory Act of the 100th General Assembly to an order entered before the effective date of this amendatory Act of the 100th General Assembly only upon a finding of a substantial change in circumstances that warrants application of the changes. The enactment of this amendatory Act of the 100th General Assembly itself does not constitute a substantial change in circumstances warranting a modification. In all such proceedings, as well as in proceedings in which maintenance is being reviewed, the court shall consider the applicable factors set forth in subsection (a) of Section 504 and the following factors:

(1) any change in the employment status of either party and whether the change has been made in good faith;

(2) the efforts, if any, made by the party receiving maintenance to become self-supporting, and the reasonableness of the efforts where they are appropriate;

(3) any impairment of the present and future earning capacity of either party;

(4) the tax consequences of the maintenance payments upon the respective economic circumstances of the parties;

(5) the duration of the maintenance payments previously paid (and remaining to be paid) relative to the length of the marriage;

(6) the property, including retirement benefits, awarded to each party under the judgment of dissolution of marriage, judgment of legal separation, or judgment of declaration of invalidity of marriage and the present status of the property;

(7) the increase or decrease in each party's income since the prior judgment or order from which a review, modification, or termination is being sought;

(8) the property acquired and currently owned by each party after the entry of the judgment of dissolution of marriage, judgment of legal separation, or judgment of declaration of invalidity of marriage; and

(9) any other factor that the court expressly finds to be just and equitable.

STATEMENT OF FACTS

Respondent agrees with and adopts the facts as set forth in the Appellate Court opinion, as follows:

On March 20, 2015, petitioner filed a petition for dissolution of marriage, alleging that the parties had been married in 2000 and had no children. Petitioner was 41 years old and a self-employed photographer, while respondent was 48 years old and was a vice president at a bank and was also a part-time psychotherapist.

On March 24, 2015, petitioner filed a motion for entry of an agreed order regarding various temporary matters, including temporary maintenance for petitioner. Petitioner claimed that the parties agreed, *inter alia*, (1) that petitioner be granted exclusive possession of the marital residence, (2) that respondent pay petitioner $3741 per month in temporary maintenance, and (3) that respondent

have access to borrow against his 401(k) and the ability to withdraw up to 50% of its current value of $170,000. On April 2, 2015, the trial court entered the agreed order.

On February 8, 2016, the trial court entered a judgment for dissolution of marriage, which incorporated a marital settlement agreement entered into by the parties. The marital settlement agreement set forth provisions for maintenance, as follows:

> 2.1 [Respondent] agrees to pay [petitioner] for her maintenance the sum of $5,000.00 (Five Thousand Dollars) per month for FOUR YEARS (48 months). The first monthly payment of $5,000.00 shall be paid on the 25th day of the month immediately following the entry of this Judgment herein and a like monthly payment of $5,000.00 to be paid on the same day each succeeding month thereafter. [Respondent] shall continue to pay maintenance to [petitioner] for an additional FOUR YEARS (a total of 8 years of maintenance shall be paid-in-full) in decreasing amounts as follows: (a) Year 5: $50,000 annually ($4,166 per month); (b) Year 6: $40,000 annually ($3,333 per month); (c) Year 7: $30,000 annually ($2,500 per month); (d) Year 8: $20,000 annually ($1,666 per month). Said maintenance payments shall be non-modifiable pursuant to Section 502(f) of the Illinois Marriage and Dissolution of Marriage Act. [Respondent] shall make said payments to [petitioner] by depositing monies into the jointly held Chase Bank account ***.

On November 7, 2017, petitioner filed a petition for rule to show cause, claiming that between May 2017 and October 2017, respondent had paid only $700 in maintenance payments, instead of the $30,000 he was required to pay. Petitioner further claimed that respondent had the ability to comply with the terms of the dissolution judgment but willfully chose not to do so. Respondent did not file a response to the petition for rule to show cause.

On January 24, 2018, the trial court entered an order finding respondent to be in indirect civil contempt for failure to make $43,800 in maintenance payments

as of the date of the order, plus statutory interest. As part of its findings, the court found that respondent "has not given any legally sufficient reasons for failure to comply with said order, even though [he] had, and still has, the means to comply with said order, and that [respondent's] failure to comply with said order is willful and contumacious." The court also ordered respondent committed to Cook County jail until he paid at least $10,000 to purge his contempt, with the mittimus stayed until the next court date.

At the next court date, on March 27, 2018, the trial court entered an order requiring respondent to complete a job diary, as well as to remain current on his maintenance payments. The court further stayed respondent's mittimus until the next court date in May. On May 29, 2018, the court found that, while respondent had been ordered to pay petitioner $10,000 by that date, he had paid only $5000. The court continued to require respondent to prepare a job diary, and also ordered respondent to prepare a financial affidavit. The court ordered respondent to pay $10,000 by the next court date, cautioning that "failure to make said payment may result in a body attachment."

On June 15, 2018, respondent filed a petition to modify the court's May 29, 2018, order, claiming that he did not have the financial resources to comply with the court's order because he was earning less than $3000 per month working as a "management consultant" and had withdrawn all funds from his 401(k) to make his maintenance payments. On July 6, 2018, the trial court entered an order ordering respondent to pay petitioner $1500 on the first of each month toward his maintenance obligation until further order of the court, and ordered respondent to

"exercise his fullest efforts on obtaining employment sufficient to meet his [maintenance] obligation." The court also ordered respondent to tender his financial affidavit, and allowed petitioner to conduct discovery as to respondent's financial condition.

On September 13, 2018, respondent withdrew his petition to modify the court's May 29 order.

On October 18, 2018, the trial court entered an order on the previously-entered rule to show cause, finding that "[t]he previous finding of contempt against Respondent remains in full force and effect." The court further ordered that respondent was "under a continuing obligation to prepare job diaries and to pay Petitioner at least $1500.00 per month towards Respondent's obligation to pay maintenance to Petitioner. Respondent is also obligated to seek additional part-time employment."

On December 20, 2018, respondent filed a petition to modify the February 8, 2016, judgment for dissolution of marriage by terminating or modifying his maintenance obligation. While the marital settlement agreement provided that the maintenance payments were "nonmodifiable pursuant to Section 502(f) of the Illinois Marriage and Dissolution of Marriage Act," respondent claimed that the maintenance obligation was not truly nonmodifiable because it did not specifically provide "that the non-modifiability applies to amount, duration, or both." Respondent claimed that a change in circumstances necessitated the modification of his maintenance obligation, as he had been without steady income for several years and his financial circumstances had "deteriorated to the point of

desperation." Respondent further claimed that the maintenance obligation was unconscionable. Respondent claimed that, at the time that petitioner filed the petition for dissolution of marriage, respondent was without formal employment and was "seeking to build a consulting business from scratch." He further claimed that he had been without steady income for over three years, and "his lack of steady employment for such an extended period of time coupled with his advancing age has compromised his ability to find employment at a level sufficient to support the maintenance obligation." Respondent claimed that the only "substantial" assets awarded to him in the dissolution judgment were his retirement accounts, which had been liquidated and turned over to petitioner to be applied towards his maintenance obligation. Respondent claimed that his gross income was $3000 per month, of which $1500 was being paid to petitioner. Respondent further claimed that he had been "diligently seeking more lucrative employment," but had been unsuccessful. He had also been seeking "odd jobs" and turning over the income from those jobs to petitioner. Respondent claimed that the maintenance obligation as written was impossible for him to perform and that petitioner "has substantial assets and is well able to earn an income to support herself."

Attached to his motion was Respondent's affidavit, in which he averred that in 2014, Respondent was working in banking, earning approximately $140,000 per year. By March 2015, he had learned that his job was in jeopardy and feared he was going to lose his job. Since he had a master's degree in pastoral counseling, he believed his "best move forward was to develop a career in

pastoral counseling." He left his job at the bank in April 2015, after giving notice in March 2015. After leaving his job at the bank, he had earnings of less than $3000 in 2016 and 2017. Beginning in 2018, he contracted with a not-for-profit agency, earning $3000 per month "producing transformational educational programs based in spiritual principles." He also performed several "one-off projects," which earned him an additional $6000.

Respondent averred that he had been searching for a job in the financial sector that would give him earnings equivalent to his former earnings, but had been unsuccessful. He had also contacted numerous executive recruiters, all of whom had advised him that it would be difficult to place him at the level of his former compensation, as he had been out of the financial sector for four years and lacked current experience. Respondent averred that his work with the not-for-profit had earned him a positive reputation and a number of professional connections, leading him to believe that his "most promising prospect for rebuilding a career" was to continue working in that sector.

In response to respondent's motion, petitioner claimed that the terms of the maintenance obligation were expressly made nonmodifiable in the marital settlement agreement. Petitioner also claimed that respondent had been formally employed at the time that petitioner filed her petition for dissolution of marriage, contrary to his contention. Petitioner claimed that, at the time, she was supportive of respondent's efforts to build a consulting business, but that her support was predicated on respondent being able to continue to support her, as she made clear to him. Petitioner claimed that respondent quit his previous job voluntarily,

because he was unhappy with it, and denied that respondent ever told her that he was about to lose his job. Petitioner also claimed that, in the dissolution judgment, respondent was awarded half of the funds in his 401(k) and three pension plans, received $17,000 from petitioner for a buyout of his interest in the parties' condominium, and was awarded "various bank accounts, stocks, stock options, and other assets in Respondent's name only which were not specifically known to Petitioner at the time of the entry of the parties' Judgment for Dissolution of Marriage."

Petitioner further claimed that, contrary to respondent's assertion, she suffered from a variety of health issues that made it difficult for her to earn an income; she was considered disabled by the State of Illinois and received employment assistance from the Illinois Department of Rehabilitation Services. Petitioner had not had regular part-time employment since Thanksgiving 2018, and had never been employed on a full-time basis.

On July 25, 2019, the trial court set respondent's motion for hearing "on the limited question of whether the non-modifiability provision of respondent's maintenance obligation is enforceable." The court further ordered that the question of whether there had been a change in circumstances would be reserved pending the court's ruling on the enforceability of the non-modifiability provision.

On September 17, 2019, the parties came before the court for a hearing, and agreed that the sole issue before the court was whether the maintenance obligation was modifiable under section 502(f) of the Illinois Marriage and

Dissolution of Marriage Act (750 ILCS 5/502(f) (West 2018)). After hearing the parties' arguments, the court found that it "does not have the ability to modify Respondent's obligation to pay Petitioner maintenance as set forth in the parties' Judgment for Dissolution of Marriage entered on February 8, 2016, pursuant to Section 502(f) of the Illinois Marriage and Dissolution of Marriage Act." Accordingly, the court denied respondent's motion, further finding that there was no just reason to delay enforcement or appeal of the order.

On October 15, 2019, respondent filed a notice of appeal.

On December 3, 2020, the Appellate Court for the First District affirmed the trial court's ruling. This appeal follows.

ARGUMENT

1. The Standard of Review is De Novo.

This case turns on the interpretation of a statute, specifically, the Marriage and Dissolution of Marriage Act, 750 ILCS 5/502, 504, 510. Therefore, the standard of review is de novo. In re Marriage of Rogers, 213 Ill.2d 129, 135-136 (2004)

To frame the issue slightly differently than the Appellate Court did in paragraph 20 of its opinion, the question in this case is whether the maintenance obligation in this case is non-modifiable as a matter of law, even when the obligation has become impossible of performance by the obligor. The trial court and the appellate court held the court is without power to entertain a motion to modify the obligation, and therefore the trial court may not reach the question of whether the obligation is impossible to perform. Whether the obligation is impossible to perform is irrelevant.

2. The Appellate Court erred in interpreting the statute according to common law principles.

The maintenance obligation is not a common law contractual obligation. It is entirely a creation of statute, specifically, Section 504 of the Illinois Marriage and Dissolution of Marriage Act. 750 ILCS 5/504.

Unlike a common law contractual obligation, a maintenance obligation cannot be discharged in bankruptcy.

Unlike a common law contractual obligation, the statute authorizes the Court to require the obligor to look for work, to report to the Court his job search activities, to take all of the obligor's income in excess of that which may be attached to satisfy a common law debt, and, if the Court is not satisfied with the obligor's level of employment, the Court may incarcerate the obligor.

Because the maintenance obligation is a creation of statute, common law contract principles of interpretation do not apply, and the law requires **strict compliance** with the requirements of the statute before the remedies are available. *See* Cityline Construction Fire and Water Restoration, Inc. v Roberts, 2014 Ill.App.(1st) 130, 730, par. 17 (2014). "[R]egardless of equitable considerations, the rights created under the [Mechanics Lien] Act are in derogation of the common law and therefore the procedural and technical requirements of . . . the Act must be strictly complied with in order for a mechanic's lien to be valid."

Under Section 510 of the Marriage and Dissolution of Marriage Act, 750 ILCS 5/510, a maintenance obligation is always modifiable upon showing of a change in circumstances. The only exception to the modifiability of a maintenance obligation is found in Section 502(f):

> The parties may provide that maintenance is non-modifiable in amount, duration, or both. If the parties do not provide that maintenance is nonmodifiable in amount, duration, or both, then those terms are modifiable upon a substantial change of circumstances.

It is noteworthy that Section 502(f) prohibits any nonmodifiability provision for the analogous child support obligation under any circumstances. This should be understood to underscore that the requirement – stated twice – that, to be effective, a nonmodifiability provision must provide that maintenance is nonmodifiable *in amount, duration, or both*.

3. The Appellate Court erroneously interpreted the statute.

The crux of the Appellate Court's interpretation of the statutory language is found in its opinion is found in paragraph 32 of its opinion:

> Respondent's contention that the agreement was required to expressly include the terms "amount, duration, or both" has no support in the language of the statute. **If the legislature had intended that the parties were required to specifically state whether the nonmodifiability applied to amount, duration, or both, it certainly could have said so.** (emphasis added).

With all respect, that is exactly what the plain language of the statute says. The plain language requires that, if the parties wish to make the maintenance obligation nonmodifiable, they must state that it is nonmodifiable *in amount, duration, or both*. If they do not state that it is nonmodifiable *in amount, duration, or both*, then it is modifiable.

By its plain language, the statute requires this designation of *amount, duration, or both* not once, but twice.

The Appellate Court states that this reading of the statute calls for exalting form over substance, as calling for magic words, and relies on what it argues must be the intent of the parties. Paragraph 32.

But, as the trial court noted in the hearing:

> Mr. Joens: . . . it specifically says said maintenance payments shall be non-modifiable pursuant to Section 502 (f) of the Illinois Marriage and Dissolution of Marriage Act. How much more clear could it be?
>
> THE COURT: It could say it's non-modifiable by amount, duration or both.

Sup R 23 lines 5-11.

But instead of applying the rule of Cityline Construction, supra., that a statute in derogation of the common law requires strict compliance, the Appellate Court has here switched over into applying the principles of common law contract interpretation, invoking equitable considerations such as "exalting form over substance."

But the consequences of failing to comply with the statutory requirements are so catastrophic for the obligor who cannot meet his obligation that this cannot be considered a matter of "form over substance."

The non-modifiability provision as written does not comply with the statute. Therefore, by the unambiguous terms of the statute, the non-modifiability provision does not meet the requirements of the statute, and maintenance is modifiable upon a showing of change of circumstances.

The basic principle of statutory construction is that the court must read a statute to give effect to every word of the statute, and not to presume that language was adopted as surplusage. In re Marriage of Rogers, *supra*., at 136.

The court cannot simply ignore the requirement that was adopted by the legislature. That is even more the case here, where the legislature adopted this requirement not once, but twice, in two consecutive sentences.

4. The Appellate Court erroneously applied the statute to the agreement in this case.

The Appellate Court held:

In the absence of any evidence that the nonmodifiability was intended to apply to only one aspect of the maintenance obligation, the trial court properly determined that the parties intended that the entire maintenance obligation was nonmodifiable. Paragraph 32.

But this reasoning stands the statute on its head. This erroneously rewrites the statute. The statute provides the agreement says maintenance is nonmodifiable in amount, duration, or both, and that if the agreement does not say that maintenance is nonmodifiable in amount, duration or both, then maintenance is modifiable.

The Appellate Court's reasoning says precisely the opposite of what the statute actually says. The Appellate Court's reasoning says, "If the agreement does not say that maintenance is nonmodifiable in amount, duration or both, then it is ***nonmodifiable in both amount and duration***."

At oral argument, counsel for appellant argued that one cannot simply order ice cream at an ice cream store in general. One must specify a flavor, chocolate, vanilla, etc. Here, the statute requires a specific designation. If no specific designation is made, then there's no "purchase" and no "sale." Sup R 14 line 15 –Sup R 15 line 1.

The court referenced that argument in its reasoning:

> I think Respondent's argument is compelling, but I don't think it carries the day in this case. In the settlement agreement that we have under Paragraph 2.1, we do have a listing of amount, and we do have a listing of duration. I think it would be very problematic then in the last paragraph of Section 2.1 if the sentence said maintenance payments shall be nonmodifiable period. But it doesn't. It goes on to say pursuant to Section 502 (f) of the IMDMA. So I appreciate the ice cream analogy. So I think here this paragraph is saying said maintenance payments shall be nonmodifiable pursuant to the rules of the ice cream store. And I think that's more than sufficient.

Sup R 27 line 16 – Sup R 28 line 6.

This reasoning of the court is an example of the logical fallacy of circular argument, which is defined by the Encyclopedia Brittannica as follows: "The fallacy of circular argument, known as *petitio principii* ("begging the question"), occurs when the premises presume, openly or covertly, the very conclusion that is to be demonstrated." https://www.britannica.com/topic/circular-argument.

The reference in the agreement to Section 502(f) is a reference to the very statute that imposes the requirement that the non-modifiability provision must designate amount, duration, or both. That reference does nothing to state which of those three designation is designated. To state that a reference to 502(f) constitutes a designation of "both duration and amount" is to presume the very conclusion to be proven.

To follow the ice cream store analogy, the rules of the ice cream store require that, in order to have ice cream, one must select a flavor. One cannot simply order ice cream in general. By the same token, Section 502(f) requires that one must designate amount, duration, or both.

Nor does coupling the statement of an amount and duration in the

maintenance provision with the reference to Section 402(f) in the subsequent paragraph constitute a designation that the non-modifiability applies to both amount and duration.

Every judgment for maintenance must by definition specify an amount and a duration. 750 ILCS 5/504(b-2)(2). If the specification of an amount and duration of maintenance is sufficient to constitute a specification that maintenance is non-modifiable as to both amount and duration, then the language requiring such designation in 502(f) is mere surplusage, which is not to be inferred.

5. Where, as here, the maintenance obligation becomes impossible of performance by obligor, the enhanced enforcement powers become utterly catastrophic, far beyond the consequences of a common law contract action.

The requirement of Section 502(f) is not idle. It acts as a safeguard. The legislature had a good reason to insert the requirement that the parties specify whether a maintenance obligation is to be non-modifiable as to amount, duration, or both.

The burden of a non-modifiable maintenance obligation is without parallel in the law.

Even a child support obligation cannot be made non-modifiable, but is always modifiable upon a showing of a change of circumstances. 750 ILCS 5/502(f).

The maintenance obligation is not dischargeable in bankruptcy.

Unlike an ordinary debtor, a maintenance debtor can be ordered to keep a job diary, and report to the court regularly as to his job search, as has been done in this case.

The debtor can even be imprisoned for failure to pay. In this case, one order directed Stephen's imprisonment until he paid his debt (C73), but stayed his imprisonment for two months. Another order stated that his failure to pay $10,000 would result in a body attachment, that is, his incarceration. C75. This incarceration takes place in a civil setting, without the right to counsel. To make such a judgment non-modifiable is a serious matter indeed. It leaves the maintenance debtor with no recourse, no matter what changes in circumstances may arise.

The requirement of 502(f) provides some safeguard against unwitting catastrophe. The requirement for a designation of amount, duration, or both, provides some safeguard against an unknowing, unintentional visitation of catastrophic consequences on the unwary party to a marital settlement agreement. It provides some notice as to the magnitude of the legal consequences of an agreement to make maintenance non-modifiable. It should not be read as a mere technicality.

This case embodies what can go wrong with a casual inference of nonmodifiability of a maintenance award.

As a demonstration of the importance of the statutory preconditions for non-modifiability of maintenance are important, the consequences of the court's ruling are telling. As the court noted in its ruling:

Mr. Staas: . . . let me also make another point, Your Honor. There's another point that has a real practical effect on this case, which is if you're finding that you're without authority to make any modification, we have talked earlier from the bench about possible ways to get our lives back on track here and spreading out the payments over a longer period of time. I would submit that based on the ruling you just made, you would have to find you're without authority to do that, because

you can't modify the duration of the obligation. The practical effect of that is that we're going to wind up having statutory interest continue to accrue against my client at 9 percent.

THE COURT: Correct.

MR. STAAS: And what happens then is he will never even be able to pay the interest that's due and accruing. So this is -- I don't know how -- I just want to make sure I understand that that's your same understanding of what your ruling means that you can't modify the judgment to stretch out the total amount due over a longer period of time.

THE COURT:· Unless the parties agree.

Sup R 31 line 12 – Sup R 32 line 13.

There will be circumstances where compliance with the maintenance obligation is impossible. Stephen believes that a hearing on change of circumstances will show this case presents just such a situation.

In those circumstances, if the Appellate Court's judgment stands, the court in this case must perennially supervise the life of the obligor, potentially for the rest of the obligor's life.

On July 6, 2018, the court ordered Stephen to exercise his fullest efforts to obtain employment sufficient to meet his support obligation, and to report to the court thereon. C93. That support obligation is $5,000 per month, plus arrearages in the neighborhood of $50,000.

In the order entered on October 18, 2018, the Court ordered Stephen to keep a job diary **and** to search for part-time jobs. C101.

This ongoing supervision means that, on the one hand, Stephen must seek employment that will allow him to pay more than $5,000 per month, and, on the other hand, to seek part-time jobs such as snow-shoveling that will pay something

close to minimum wage.

The court must then oversee Stephen's efforts and decide whether Stephen should be seeking training that will enable him to increase his potential salary and pay down the mountain of debt, or to make some modest payments from whatever he can earn in low-paying jobs. Meanwhile, his mountain of debt grows ever higher, with no respite either for the obligor or for the Court.[1]

6. **The Trial Court Should Be Permitted To Determine Whether Maintenance Should Be Modified.**

By agreement, the court heard only the question of whether it is barred from entertaining a motion to modify. The question of whether a change of circumstances has occurred was reserved pending the outcome of this appeal.

Appellee's filings with the appellate court and this court argues forcefully that her circumstances justify continued maintenance. It must be emphasized that this argument is made without evidence. It is without evidence because the court

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[1] Section 505.1(a) provides:
Whenever it is determined in a proceeding to establish or enforce a child support or maintenance obligation that the person owing a duty of support is unemployed, the court may order the person to seek employment and report periodically to the court with a diary, listing or other memorandum of his or her efforts in accordance with such order.

In this case, in addition to ordering Appellant to turn over to Appellee half of his gross income from his consulting contract, the trial court ordered Appellant to submit a job diary and to find additional employment, though, as he had a consulting contract providing income of $3,000 per month, there was no determination that he was unemployed. Instead, the court ordered Appellant to look for work *sufficient to allow him to pay the maintenance obligation*, though there is no statutory authorization for this, and though Appellant maintained the $3,000 per month he was earning was the best he could do. This illustrates the burden placed on the court, that is unique to a non-modifiable maintenance obligation. The court takes on the role of monitoring not only whether obligor is employed, but decides whether obligor is making enough at his employment.

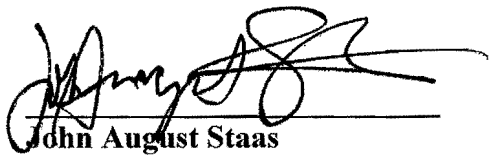
specifically did not reach the questions concerning the resources of the parties. The court did not reach those questions because it held that it was barred from reaching those questions.

Appellee will not be deprived of anything if the rulings of the trial court and appellate court are reversed. All that will happen is, appellant will have the opportunity to present evidence pursuant to the statutory provisions governing a motion to modify maintenance.

The parties should be afforded an opportunity to do what the statute explicitly provides for: allow appellant to show the court a change in circumstances which has rendered compliance with the maintenance obligation impossible, and, if he makes that showing, allow the court to modify the maintenance obligation in accordance with the factors set forth in the statute, and set forth a schedule which will allow him to start paying down the large arrearage that has already accrued. Appellee should be allowed to make a showing that circumstances have not changed and that, according to the factors set forth in the statute, continued maintenance is appropriate.

CONCLUSION

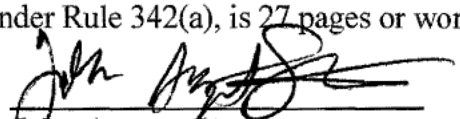
For the reasons set forth above, Stephen Dynako prays this Court reverse the ruling of the trial court and the Appellate Court that the trial court is without authority to modify the maintenance obligation in the judgment of dissolution, and remand for further proceedings affording Stephen Dynako to show the court a change in circumstances, and allow the court to modify the maintenance obligation in accordance with the factors set forth in the statute.



John August Staas
Counsel for Appellant Stephen Dynako

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 27 pages or words.



John August Staas
Counsel for Appellant Stephen Dynako

APPENDIX

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#24

Order (Rev. 02/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

IN RE: THE MARRIAGE OF

BETSY DYNAKO, a/k/a BETSY ZACATE
v. Petitioner,

STEPHEN DYNAKO,
Respondent.

No. 15 D 2531

Exempt 4/10/06

ORDER

This matter coming to be heard on Respondent's Motion to Modify Support and his Memorandum in Support of Motion to Modify Support and Petitioner's Responses to both pleadings, the Court hearing the arguments of counsel and being otherwise duly advised in the premises,

THE COURT FINDS AS FOLLOWS:

The Court does not have the ability to modify Respondent's obligation to pay Petitioner maintenance as set forth in the parties Judgment for Dissolution of Marriage entered on February 8, 2016, pursuant to Section 502(f) of the Illinois Marriage and Dissolution of Marriage Act.

IT IS HEREBY ORDERED:

1. Respondent's Motion to Modify Support is denied.
2. There is no just reason for delaying enforcement or appeal of this Court Order; this is a final and appealable order pursuant to Rule 304(a)
3. This cause is set for status on November 4, 2019 at 9:30 a.m. in courtroom 3007, without further notice.

Associate Judge
David E. Haracz

SEP 17 2019

Circuit Court – 1878

ENTERED:

Dated: _____, _____

Judge Judge's No.

Attorney No.: 50696
Name: Thomas H. Joens
Atty. for: Petitioner
Address: 33 N. LaSalle Street, Suite 2000
City/State/Zip: Chicago IL 60602
Telephone: (312) 541-8889

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

09/17/2019

IN THE CIRCUIT COURT OF COOK COUNTY

COUNTY DEPARTMENT - DOMESTIC RELATIONS DIVISION

IN RE THE MARRIAGE OF:)
BETSY DYNAKO,)
)
Petitioner,)
) Case No. 15 D 2531
and)
)
STEPHEN DYNAKO,)
)
Respondent.)

REPORT OF PROCEEDINGS at the hearing of the above-entitled case before the HONORABLE DAVID E. HARACZ, Judge of the said Court, on the 17th day of September, 2019, at 11:38 a.m.

09/17/2019

A P P E A R A N C E S :

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on behalf of the Respondent.

09/17/2019

(Whereupon, the following proceedings were had in court outside the presence of a jury.)

MR. STAAS: This is the case of Betsy Dynako versus Steven Dynako 15 D 2531. I'm August Staas for Respondent, Stephen Dynako.

MR, JOENS: I'm Thomas Joens here for the petitioner, Judge.

MR. STAAS: It's my understanding, Your Honor, based on your order of July 25th that we are here for the limited question of whether the respondent's motion to modify support is barred -- whether the Court is barred from modifying support by the language of the statute section 502 (f). That's 750 ILCS 5/502 (f).

And I take it that that is an entirely legal question whether the terms of the judgment regarding non-modification of maintenance are such that 502 (f) bars Your Honor from modifying. And I take it that's a legal question. I don't intend to call witnesses on the subject.

THE COURT: That was my understanding as well for today's hearing.

MR. JOENS: Judge, I was under the impression that how the marital settlement agreement was entered into between the parties was relevant to the issue of

whether or not it's modifiable or not in terms of whether or not Respondent entered into this agreement knowing what he signed, because they've taken a variety of positions here where they are saying he didn't know what he signed or he didn't read it or he didn't understand it or he didn't think -- if it was in effect.

If the Court is saying we only have the limited issue of whether or not 502 (f) allows modification, I can argue that today as well and we can, you know, that's fine.

THE COURT: There was a part of the argument that dealt with unconscionability, I believe.

MR. STAAS: I did make an argument in my briefing regarding unconscionability. I'm not arguing that today.

THE COURT: Okay. Then I think it's completely a legal argument then.

MR, JOENS: Okay. That's fine, Judge.

THE COURT: Mr. Staas, you may proceed.

MR. STAAS: Sure. So I take it, Your Honor, that we are not considering the issue of change in circumstances. But just for the record, I will state we're not taking evidence on that today, because that question has been reserved. But I believe it's been

well established in the proceedings to hold Mr. Dynako in contempt that Mr. Dynako's income is not sufficient to allow him to continue to meet the maintenance obligations. And if we go forward in a proceeding to determine change in circumstances, I believe that's what the evidence is going to show.

With regard to the issue of 502 (f), I first want to emphasize that the -- this Court's authority to order maintenance or to modify maintenance is entirely statutory. It's not a question of common law contract law. In fact this Court is barred as I understand it by In Re Hewitt and by Brewer, both of those Illinois Supreme Court decisions which say that parties cannot enter into private contracts -- common law contracts for maintenance or other remedies that would emulate marriage, that in fact this is a question of statutory construction.

Under the statute, the Illinois Marriage and Dissolution of Marriage Act, Section 504 governs maintenance and allows the Court to order maintenance. And that's where this Court's authority to order maintenance derives.

In addition to that, Section 504 makes reference to modification of maintenance and

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refers the Court to Section 510. Section 510 of the Marriage and Dissolution of Marriage Act provides, and I'm going to quote the statute here, "Except as otherwise provided in Paragraph (f) of Section 502," and then there's a reference to the child support statute which is irrelevant here, so "Except as otherwise provided in Paragraph (f) of Section 502, the provisions of any judgment with respect to maintenance or support may be modified only as to installments accruing subsequent to due notice," et cetera.

So the Court has the authority to modify maintenance unless Section 502 prohibits the Court from entertaining a motion. So I think we need to then examine the language of 502 (f).

Now, language 502 (f) as I stated in my memorandum in support of the motion provides that the parties -- let me find the exact statute. The parties may provide that maintenance is non-modifiable in amount, duration or both. If the parties do not provide that maintenance is non-modifiable in amount, duration or both, then these terms are modifiable upon a substantial change in circumstances.

Again, we're not considering

today the question of substantial change in circumstances. The question is whether the parties provided in the marital settlement agreement that maintenance is non-modifiable in amount, duration or both.

The language of the marital settlement agreement is -- makes a reference to Section 502 (f) and says that the maintenance is not modifiable -- let me find the --

MR. JOENS: Right here, Counsel.

MR. STAAS: Okay. It provides said maintenance payments shall be non-modifiable pursuant to Section 502 (f) of the Illinois Marriage and Dissolution of Marriage Act.

Section 502 (f) specifically not only once but twice states that the -- that in order to be effective, a provision for non-modification has to say whether the non-modification is as to amount, duration or both. It's as if you said you can have ice cream, but you have to designate whether it's going to be vanilla, strawberry or chocolate. You have to designate one of those things. If you don't designate one of those things, again, the statute specifically says if you don't make one of those three designations,

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then the terms are modifiable.

Now, counsel in his memorandum in opposition to the motion to modify support relies on the case to say that the parties have sort of a freedom of contract to say that the maintenance will be non-modifiable.

I will note that that case law was decided under the old statute, statute that existed prior to the entry of the judgment in this case. And I think that's important, because the prior statute said except for terms concerning the support, custody or visitation of the children, the judgment may expressly preclude or limit mod fication of terms set forth in the judgment if the agreement so provides. Otherwise terms of an agreement set forth in the judgment are automatically modified by modification of the judgment.

Before the judgment was entered in this case, the legislature changed the statute and added the language that I cited just a few moments ago. They added the requirement that in order for a non-modification clause to be enforceable, it has to designate that the maintenance is non-modifiable in amount, duration or both.

It goes on to say if the

parties do not provide that the maintenance is non-modifiable in amount, duration or both, then those terms are modifiable.

Now, that was new language added in by the legislature. It has to say non-modifiable in amount, duration or both. And it says that twice in the statute.

Now, what counsel is saying is that we should just read those terms that were expressly added by the legislature, read those terms out of the statute and say that the statute should be read to say -- to stop when it says the maintenance is non-modifiable period, and that the language in amount, duration or both should be presumed to not exist or to not mean anything.

Now, that violates the basic principal of statutory construction as set forth, and I'm going to give you a couple citations, People versus Zaremba, Z-a-r-e-m-b-a, 158 Ill. 2d 36 from 1994, and People v Wick, W-i-c-k 107 Ill. 2d 62 from 1985.

In both of those cases, the Illinois Supreme Court cited rules of statutory construction. In Wick the Illinois Supreme Court said the rule of statutory construction filed by this Court

is that the presence of surplusage will not be presumed.

In Zaremba, the Illinois Supreme Court similarly said that the statute -- that the statute is to be construed according to its clear terms, and it will be given effect without resorting to age of construction when the statutory language is clear.

Here the statutory language is very clear. It says there has to be a designation of -- that the maintenance is non-modifiable as to amount, duration or both.

What counsel is arguing is that that should be -- those words should be presumed to be surplusage. The rules of statutory construction are very clear. There's not to be any assumption of surplusage especially when in a case like this the statute had been expressly modified just in the year prior to entry of the judgment to add those terms.

Now, I made reference in my argument -- in my brief, I'm sorry, as to why that would be so and why that makes sense. I pointed out that even under the earlier statute, child support can always be modified. You're not allowed to put into your Marital Settlement Agreement that child support is

non-modifiable. It can always be modified. And an agreement that says that child support is non-modifiable won't be enforced.

Here both maintenance and child support are different from your average contract. And your average contract when one party fails to comply with the contract, that debt can be discharged in bankruptcy. There are limits to what can be used to enforce the judgment. That is to say there's a whole list of exemptions that apply, so you can't take someone's retirement account to enforce an ordinary debt.

Maintenance and child support are different. A maintenance obligation as we've seen in this very case renders all of the debtors' assets subject to seizure. There aren't any exemptions from it. That's why Mr. Dynako turned over all of his retirement accounts so that he's been left penniless.

Furthermore, the Court has frequently stated that if Mr. Dynako doesn't come up with money, the Court will put him in jail. You don't do that with ordinary debts. This is a very extraordinary kind of indebtedness that comes in a maintenance obligation.

Even child support isn't enforced the way maintenance obligations are, because child support can always be modified. This is such an extraordinary remedy that it's perfectly reasonable that the statute specifically designates and prescribes under what circumstances you can put that kind of onerous load on a payor's maintenance, and that is it has to say that maintenance is non-modifiable in amount, duration or both. It doesn't say that. Therefore the Section 502 (f) -- the requirements of Section 502 (f) are not met by the judgment in this case. And therefore 502 (f) doesn't constitute any kind of bar with this Court's modification of maintenance. And therefore the Court should order that we proceed on to find out whether there's a change in circumstances.

THE COURT: Thank you.

MR. STAAS: That's my argument.

MR. JOENS: Judge, in response first there's a couple of factual mistakes that counsel made. First of all, he stated that Respondent has turned over all of his retirement accounts to his former wife, and that's absolutely not true, and counsel knows it.

Secondly, he talks about the fact that jail has been discussed here. We may have

mentioned it in our original pleading, but I think the Court has made it clear that given Respondent's circumstances you are not likely or have you threatened that I recall to throw him in jail for his failure to comply with the maintenance provisions of the parties' judgment for dissolution of marriage.

I think we need to read that again, because it seems pretty clear to me. You know, counsel doesn't think so, but it says said maintenance payments shall be non-modifiable pursuant to Section 502 (f) of the Illinois Marriage and Dissolution of Marriage Act. I don't think it could be any clearer than that.

The plain language says we cannot modify maintenance. The parties went into this knowing maintenance was non-modifiable. That was the agreement that they signed off on for whatever reason, whatever excuses that Respondent gives for whether he didn't read the agreement or if he didn't understand it or if it was different than a previous agreed order. But he signed this of his own volition.

They're taking an extraordinary position. And their position is there's a couple of words that are missing here. But the plain language of the Marital Settlement Agreement says it's

non-modifiable. And their position seems to be that they left out magic language, and for that reason the Court has the power to come in and turn a non-modifiable marital settlement agreement in reference to maintenance into a modifiable situation.

And counsel cited a couple criminal cases in reference to this matter, but those aren't applicable to the facts of this case. I cited in my response to Respondent's memorandum of law the case of In Re The Marriage of Scott 150 Ill. Dec. 868 which stands for the proposition that says unless the parties' intent is clearly manifested in such agreement to limit or preclude such judicial modification or termination of maintenance, the Court can't do it.

It was clearly the intent of the parties to make the maintenance payments non-modifiable. I also cited the case of In Re The Marriage of Goldberg 218 Ill. Dec. 272 that said a settlement that is legal and binding on its face is presumed valid, and that presumption can only be overcome by proving through clear and convincing evidence that there was fraud and inducement, fraud in execution, mutual mistake or mental incompetence. None of those factors can be met by the respondent in this

case.

And the last case that I cited in my response was In Re The Marriage of Brent which stands for the proposition that where the parties -- which is 200 Ill. Dec. 799 which stands for the proposition that where the parties to a dissolution of Marriage case enter into a settlement agreement, that alters the Court's ability to terminate and modify maintenance, because they've entered into an agreement saying they can't do.

And counsel wants this Court to take a new position. He hasn't cited any case law to the effect of unless the language specifically is the language that he says is appropriate, if it doesn't specify the 502 (f) language as opposed to saying we're using the 502 (f) language which I understand what it means, he understands what it means, you understand what it means, without reciting that language we're throwing the maintenance out.

There's no case law to that effect. If there was a case to that effect, Counsel would have cited it. I'm not aware of that case. I don't think there is a case to that effect. If this is a matter of first impression, I think it would be

extraordinary for you to make a finding that because a couple words are missing from the parties' marital settlement agreement we're going to throw that provision out where it's very clear what that language means.

And, again, it specifically says said maintenance payments shall be non-modifiable pursuant to Section 502 (f) of the Illinois Marriage and Dissolution of Marriage Act. How much more clear could it be?

THE COURT: Its could say it's non-modifiable by amount, duration or both.

MR. JOENS: Well, theoretically I suppose that it could, but I don't think I've ever prepared an agreement with that language in there. And I don't know that very many practitioners in this division have prepared agreements with that language in there. Maybe in the future they should, but I don't think that it's appropriate where it specifically provides that 502 (f) is to be followed by this Court. And it's non-modifiable.

THE COURT: Any reply?

MR. STAAS: Yes. First, all three cases just cited by counsel were decisions made prior to the enactment of this modification to the statute. This

Court's -- again, this is not a question of trying to read the intent of the parties from a contract as it would be under common law.

The authority of this Court to modify maintenance comes from the statute. And the limitations on this Court's authority to modify maintenance also come from the statutes. The statutory language at the time of the entry of this judgment were very specific and had been amended to acquire amount, duration or both.

What counsel is saying here is that the judgment refers to 502 (f). I would respond to that that assuming that's true, the statute and the reference is to 502 (f), and by that citation the agreement is incorporating by reference 502 (f), then that means that we have to go by the terms of 502 (f) here in this proceeding. And it says if the parties do not provide that maintenance is non-modifiable in amount, duration or both, then those terms are modifiable.

So the language could not be more clear. Counsel's correct about that. The language could not be more clear that the statute requires not once but twice that that designation of amount, duration

or both has to be made or if it doesn't make that designation as to one of those three choices, then the terms are modifiable.

What he's asking you to do, Your Honor, is to infer that what the parties did was say not modifiable in amount or duration. It's both. In other words, he's asking you to interpret the most harsh designation of those three designations to apply that in this case, apply those terms to the judgment even those terms are absent in the judgment. He wants you to make the designation that is the most unfavorable to my client.

Now, for that we can look at a few things. First, it's very clear that this Marital Settlement Agreement and judgment were drafted by Petitioner, not by my client. Second, that he was not represented by counsel.

MR. JOENS: Judge, I'm going to object to this, because I'm making an objection based on the fact that we're talking about an interpretation of the statute. Now he's going way beyond that. He's also going way beyond how I responded to his arguments. So I don't think it's appropriate for him to now start talking about how the agreement was entered into it.

If we were going to do that, I could go on for a couple hours here, but I prefer not to do that based on the fact that the Court has limited this discussion to an interpretation of the agreement that sets forth -- the language in the agreement in conjunction with the statutory language.

MR. STAAS: I'm glad to withdraw my remarks if counsel will also withdraw his remarks about it being clear what the intent of the parties was where he's trying to introduce something that seems to be extraneous to the actual document.

It's very clear to me that the document does not state -- does not make any designation of amount, duration or both and that he is asking this Court to infer the most unfavorable terms my client to supply the term that it's non-modifiable as to both.

The statute was modified, and it's very clear from the fact that the statute used to allow the parties to agree that maintenance would be non-modifiable, and that with this new prevision of the statute that was in place at the time of judgment was entered, the legislature had added this requirement.

It wasn't adding this requirement for fun. It's not to be read at surplusage.

That provision in the statute is required to be read and given effect by the Court.

Counsel is correct that I haven't found any case law interpreting that question. This statute is like three-and-a-half years old. I haven't seen any appellate court decisions on the subject.

But it's certainly true that all of the case law he's citing comes from long before the statute was modified. So the terms of the statute as it's currently written are not being interpreted by those cases.

MR. JOENS: Judge, I want to --

THE COURT: Okay. Hold on a second. The magic language is really important. So I agree with you. And I think Respondent's argument is compelling, but I don't think it carries the day in this case.

In the settlement agreement that we have under Paragraph 2.1, we do have a listing of amount, and we do have a listing of duration. I think it would be very problematic then in the last paragraph of Section 2.1 if the sentence said said maintenance payments shall be non-modifiable period. But it doesn't. It goes on to say pursuant to Section

502 (f) of the IMDMA.

So I appreciate the ice cream analogy. So I think here this paragraphs is saying said maintenance payments shall be non-modifiable pursuant to the rules of the ice cream store. And I think that's more than sufficient.

So I disagree with the Respondent's position. And at this point, am I denying the motion to modify?

MR. JOENS: I think you are, Judge. I think you're denying his ability to --

THE COURT: Yes. I'm sorry. Go ahead.

MR. STAAS: I think what Your Honor is ruling is that you're without authority to modify.

THE COURT: Modify. Correct.

MR. STAAS: Under the language of the statute.

THE COURT: Right. We're not going to get to the unconscionability arguments or the change in circumstances certainly. I am denying the motion to modify.

MR. JOENS: Thank you.

MR. STAAS: On the basis of 502 (f) stricken you have authority to do so, is that correct?

THE COURT: Correct.

09/17/2019

MR. STAAS: Okay. I understand your ruling, and we'll draw an order. I just want to make clear, Your Honor, that we then have first I'd like language in there to say that this is a final order and so that we can take it up on appeal. Because I believe this was intentionally framed as a ruling on a question of law and that we could take it up on appeal.

THE COURT: I agree with you. So I will grant 304 (a) language if that's what's needed here.

MR. JOENS: So it's a final and appealable order?

THE COURT: I believe it is.

MR. JOENS: Then I'll add that language to the order, Judge.

MR. STAAS: Okay. Then just to continue on, the further steps would be further proceedings I take it to enforce the judgment, the maintenance order?

THE COURT: You must have a rule on file, is that correct, a petition for rule?

MR. JOENS: That the rule has been entered by the Court.

THE COURT: Okay. You're correct. Procedurally where we were --

MR. JOENS: Right. And that took place a long

time ago within the two-year period of when the judgment was entered, and then they filed this motion for modification sometime after the two years came and went.

THE COURT: Yes.

MR. STAAS: So that's fine. I just want to make sure I'm clear as to where we are and where we're going so --

THE COURT: Are there any other dates that are needed at this point?

MR. JOENS: I don't know that there are. I know that my client wants me to come in, and you had set a temporary amount of $1,500 a month. She wants me to come in and get more than that from the Respondent which would still be less than what he is ordered to pay pursuant to the terms of the Marital Settlement Agreement that's incorporated into the judgment for dissolution.

THE COURT: That's correct.

MR. STAAS: There are a few things, Your Honor. Point one we have -- there was a contempt citation -- I'm sorry. You did cite my client for contempt back in January I believe of 2018.

MR. JOENS: Or December of 2017, one or the other.

09/17/2019

MR. STAAS: Somewhere in there.
MR. JOENS: Right.
MR. STAAS: There was a finding of contempt. The date of January 25th, 2018 rings in my mind, but it may be wrong. In any event, there was a finding of contempt. I would like leave to file. Because there have been subsequent proceedings in which you found that my client simply doesn't have the ability to pay. So I would like to have leave to file a motion to discharge that, discharge the contempt finding.
THE COURT: I don't think you need leave.
MR. STAAS: No. But we're going to need future dates because I'm going to -- let me also make another point, Your Honor. There's another point that has a real practical effect on this case, which is if you're finding that you're without authority to make any modification, we have talked earlier from the bench about possible ways to get our lives back on track here and spreading out the payments over a longer period of time.
I would submit that based on the ruling you just made, you would have to find you're without authority to do that, because you can't modify the duration of the obligation. The practical effect of

that is that we're going to wind up having statutory interest continue to accrue against my client at 9 percent.

THE COURT: Correct.

MR. STAAS: And what happens then is he will never even be able to pay the interest that's due and accruing. So this is -- I don't know how --

I just want to make sure I understand that that's your same understanding of what your ruling means that you can't modify the judgment to stretch out the total amount due over a longer period of time.

THE COURT: Unless the parties agree.

MR. JOENS: Judge, that was going to be my point, that it might be something that in a pretrial setting, counsel and I could talk to the Court about in reference to this to resolve this case where she would receive the same amount of money plus the statutory interest and then plus the attorneys fees that are due to me because of the contempt that the Respondent's been found in.

But if we agree to stretch it out over a longer period of time the Court certainly has the power -- you could sign such an agreed order. You'd

probably be happy to do it. But you do have the power to sign such an order if there's an agreement between the two of us on behalf of our respective clients.

THE COURT: I agree with you. They may not agree with the terms that you just stated.

MR. JOENS: I'm not going to comment on that at this point, but let me write the order.

THE COURT: We could either take the matter off call, wait for any motions by either party or I could set it for a settlement conference or pretrial.

MR. JOENS: Why don't you set it for status in about 45 days. In the meantime that will give me a chance to file a motion to get more money for my client than she's getting right now pursuant to the Court order that was entered subsequent to the judgment for dissolution of marriage and perhaps get a petition for attorneys fees on file at the same time.

THE COURT: Sure.

MR. JOENS: Okay. Very good, Judge. I'll prepare the order.

THE COURT: Thank you.

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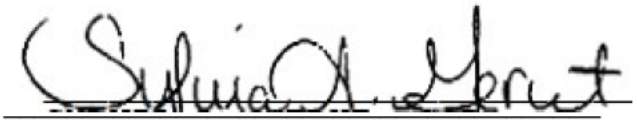
SYLVIA GERUT REPORTING, INC.

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

SYLVIA A. GERUT being first duly sworn, deposes and says that she is a Certified Shorthand Reporter in Cook County, Illinois, and reporting proceedings in the Courts in said County;

That she reported in shorthand and thereafter transcribed the foregoing proceedings;

That the within and foregoing transcript is true, accurate and complete and contains all the evidence which was received in the proceedings had upon the above entitled cause.



SYLVIA A. GERUT, CSR
License No. 084-003757
Notary Public

#49901

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - DOMESTIC RELATIONS DIVISION

IN RE THE MARRIAGE OF:	)	
	)	
BETSY C. DYNAKO,	)	
Petitioner,	)	
	)	
and	)	Case No. 15 D 2531
	)	
STEPHEN D. DYNAKO,	)	
Respondent.	)	

Associate Judge
David E. Haracz
FEB 08 2016
Circuit Court – 1878

JUDGMENT FOR DISSOLUTION OF MARRIAGE

THIS CAUSE COMING TO BE HEARD upon the Petition for Dissolution of Marriage of the Petitioner, Betsy C. Dynako ("Betsy"), and Respondent, Stephen D. Dynako, having filed his Appearance herein, and upon Stipulation by the parties that the above-entitled cause may proceed to an immediate hearing upon the Petition of the Petitioner as an uncontested matter; Betsy appearing in-person and through counsel, Stephen having been provided notice of the court date but choosing not to appear, and the Court considering all of the evidence, and now being fully advised in the premises, FINDS as follows:

1. Betsy is 42 years of age and has been a resident of the State of Illinois for ninety (90) days continuously and immediately preceding the commencement of this cause.

2. Stephen is 49 years of age and has been a resident of the State of Illinois for ninety (90) days continuously and immediately preceding the commencement of this cause.

3. The parties' were married on June 10, 2000 in Bloomingdale, Illinois and said marriage is registered in Du Page County, Illinois.

4. No children were born or adopted by the parties' and Betsy is not now pregnant.

5. Irreconcilable differences have developed between the parties causing an irretrievable breakdown of the marriage.

6. The court has jurisdiction over the subject matter of this dispute.

7. That the Petitioner, Betsy Dynako, has established by competent, material and relevant proof, all of the allegations and charges contained in her Petition for Dissolution of Marriage, and the equities are with the Petitioner; and that a Judgment of Dissolution of Marriage should be entered herein.

8. The parties have entered into a written Marital Settlement Agreement ("Agreement") providing for settlement of the matters relating to the parties of this marriage and their property (See Exhibit A attached). A copy of the Agreement is attached hereto and incorporated herein, and has been presented to the Court for its consideration and approval. The Court having considered the Agreement and the circumstances of the parties finds that the Marital Settlement Agreement was fairly and voluntarily entered into by the parties, is fair and equitable in its terms and provisions and is not unconscionable in any of its terms or provisions and should be approved by the court. The Agreement has been presented to this Court for its consideration and approval and it is in words and figures, as follows:

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - DOMESTIC RELATIONS DIVISION

IN RE THE MARRIAGE OF:	)	
	)	
BETSY C. DYNAKO,	)	
Petitioner,	)	
	)	
and	)	Case No. 15 D 2531
	)	
STEPHEN D. DYNAKO,	)	
Respondent.	)	

MARITAL SETTLEMENT AGREEMENT

This Agreement made and entered into this 29 day of JANUARY, 2016, by and between Betsy C. Dynako, (hereinafter "Betsy"), a resident of Chicago, Illinois and Stephen D. Dynako, (hereinafter "Stephen"), a resident of Chicago, Illinois.

WITNESSETH:

A. WHEREAS, the parties were married on June 10, 2000, in Bloomingdale, Du Page County, Illinois and are now husband and wife; and,

B. WHEREAS, unfortunate and irreconcilable difficulties and differences have arisen between the parties causing an irretrievable breakdown of the marriage; and,

C. WHEREAS, Betsy has filed her Petition for Dissolution of Marriage against Stephen in the Circuit Court of Cook County, Illinois, Case Number 15 D 2531, entitled "In re the Marriage of: Betsy C. Dynako, Petitioner and Stephen D. Dynako, Respondent," and said cause is presently pending and undetermined in said Court; and,

D. WHEREAS, Betsy has employed and had the benefit of counsel from Chicago Family Law Group, LLC, and Stephen has chosen to represent himself, pro se. Each party acknowledges that he and she have been fully informed as to the property, estate, and income of the other party by the other party; and,

E. WHEREAS, the parties consider it to be in their best interests to resolve, and have come to an amicable agreement with respect to all questions of support and maintenance for both parties, distribution, and assignment of their Marital and Non-Marital property, and all other rights arising out of the marital relationship; and,

F. WHEREAS, each party acknowledges that they are fully informed of their respective rights and obligations under Illinois law and pursuant to the terms and provisions of this Agreement. Accordingly, each party represents and warrants that:

2. He or she has carefully reviewed the terms and provisions of this Agreement and has a full and complete understanding of the legal consequences thereof;

3. He or she has entered into this Agreement freely and voluntarily, without imposition of force, duress, coercion, or undue influence from any source;

4. The other party has made no representations or warranties as an inducement to enter into this Agreement, other than as set forth in writing within the terms and provisions of this Agreement; and,

5. The terms and provisions of this Agreement are fair and equitable to each of the parties in light of the respective and collective circumstances of the parties.

NOW THEREFORE, in consideration of the mutual and several covenants, promises and agreements of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do freely and voluntarily covenant and agree by and between themselves as follows:

ARTICLE I
STATEMENT OF INTENTION

1.1 **Integrity of Marriage.** This Agreement is not intended to undermine the integrity of marriage or the family relationship.

1.2 **Amicable Settlement of Disputes.** By this Agreement, the parties intend to affect an amicable resolution of their disputes, to mitigate the potential harm to the spouses and their children caused by dissolution of marriage, and to make reasonable provision for the parties and their children after dissolution of marriage.

1.3 **Reservation of Rights.** In the event the court shall find this Agreement to be unconscionable, each party reserves the right to prosecute or defend any action now pending or that may hereafter be brought for relief under the Illinois Marriage and Dissolution of Marriage Act.

ARTICLE II
MAINTENANCE and ALIMONY

2.1 STEPHEN agrees to pay BETSY for her maintenance the sum of $5,000.00 (Five Thousand Dollars) per month for FOUR YEARS (48 months). The first monthly payment of $5,000.00 shall be paid on the 25th day of the month immediately following the entry of this Judgment herein and a like monthly payment of $5,000.00 to be paid on the same day each succeeding month thereafter. STEPHEN shall continue to pay maintenance to BETSY for an additional FOUR YEARS (a total of 8 years of maintenance shall be paid-in-full) in decreasing amounts as follows:

a) Year 5: $50,000 annually ($4,166 per month);
b) Year 6: $40,000 annually ($3,333 per month);

c) Year 7: $30,000 annually ($2,500 per month);
d) Year 8: $20,000 annually ($1,666 per month).

Said maintenance payments shall be non-modifiable pursuant to Section 502(f) of the Illinois Marriage and Dissolution of Marriage Act. STEPHEN shall make said payments to BETSY by depositing monies into the jointly held Chase Bank account (last 4 digits: 8903).

2.2 The maintenance payments from STEPHEN to BETSY, pursuant to this Article II herein, are designated under Internal Revenue Code Section 71(b)(1)(B) as not includible in the gross income of BETSY under Section 71 and not allowable as a deduction to STEPHEN under Section 215 of the IRC, and the parties agree to prepare their income tax returns accordingly.

ARTICLE III
MARITAL AND PROPERTY SETTLEMENT

3.1 STEPHEN and BETSY agree upon the following provisions set forth in this Article III as: (1) an assignment of non-marital property to the appropriate party; (2) an allocation of marital property in acknowledgment of the contributions of each of the parties to the accumulated marital estate; (3) an allocation of the parties' liabilities; and (4) a full and final settlement and satisfaction of the marital, property, and estate rights and claims of each of the parties. The following paragraphs provide for the aforedescribed asset and liability allocation between the parties:

PROPERTY ASSIGNMENTS

3.2 On the effective date of this Agreement, BETSY agrees to and does hereby assign and release to STEPHEN all of her right, title, interest, expectancy, beneficial interest, and claim in and to each of the following assets and beneficial interests in the following:

a) All of his clothing, jewelry, and other personal effects presently in his possession and all of his personal property, possessions, and all furnishings and electronics currently in his place of residence;
b) Former marital bank/investment accounts: J.P. Morgan funds (last 4 digits: 4702) and Dream Savings (last 4 digits: 9355).
c) Any and all bank, brokerage, and investment(s) accounts in only his name;
d) Any and all other personal property in his possession or under his control;
e) The painting entitled "Skin" currently in the Marital Residence;
f) STEPHEN's grandmother's ring.

3.3 On the effective date of this Agreement, STEPHEN agrees to and does hereby assign and release to BETSY all of his right, title, interest, expectancy, beneficial interest, and claim in and to each of the following assets and beneficial interests:

a) All of her clothing, jewelry, and other personal effects presently in her possession and all of her personal property, possessions, and all furnishings and electronics currently in her place of residence;

b) Former marital bank/investment accounts: Chase Bank N.A. (two accounts) with last 4 digits: 7228, 5324 respectively;
c) All keys, FOBs, garage door openers etc. related to the Marital Residence;
d) Any and all bank, brokerage, and investment(s) accounts in only her name;
e) Any and all other personal property in her possession or under her control;
f) Website domain: BetsyDynako.com.

REAL ESTATE

3.4 Title to the marital residence of the parties located at 212 West Washington, Unit 1610, Chicago, Illinois, is jointly owned by BETSY and STEPHEN and shall be awarded to BETSY as her sole property. STEPHEN shall execute a Quitclaim Deed transferring his interest to BETSY within 30-days of the entry of this Judgment herein.

3.5 BETSY shall refinance the outstanding mortgage obligation on said Chicago, Illinois home or otherwise remove STEPHEN's name therefrom within 180 days of her receipt of the Quitclaim Deed referenced in paragraph 3.4 above. In the event that BETSY is unable to or does not wish to refinance the mortgage indebtedness on the Chicago home or otherwise remove STEPHEN's name therefrom within said 180 days, the Chicago home shall be placed for sale upon terms and conditions agreed to by the parties or, if the parties cannot agree, upon terms and conditions determined by the Court upon property notice and petition. In the event the Marital Residence is sold, BETSY shall receive one hundred percent (100%) of the net proceeds of sale.

ARTICLE IV
RETIREMENT ACCOUNTS

4.1 The parties acknowledge that STEPHEN has an interest in a 401(k) plan ("Plan") currently administered by Ascensus (Plan ID No. XX0-772) with a balance of $143,683.07 as of December 6, 2015. BETSY is awarded $75,000 from STEPHEN's Plan. If necessary, a Qualified Domestic Relations Order shall be prepared and entered to effectuate said division. The Plan participant shall incur any administrative costs required to effectuate said division.

4.2 Other than the above, both parties' shall and hereby does, waive and release any and all rights to one another's pension plan(s), IRAs, stock interest, profit sharing, 401K plan and other employee retirement or tax deferred benefits plans or programs available to her/him, whether past, present or future.

ARTICLE V
DEBTS AND OBLIGATIONS

5.1 STEPHEN shall be wholly responsible for the parties' joint Amazon credit card debit (last 4 digits: 6489). Further, STEPHEN shall close the Chase Freedom credit card (last 4 digits: 6489) and the Slate credit card (last 4 digits: 4702). STEPHEN shall save and hold BETSY free, harmless and indemnified against said debt(s) and obligation(s).

5.2 Except as provided for herein, STEPHEN will be responsible for and pay all individual

debts and financial obligations that are, or were, incurred by him prior to or subsequent to the effective date of this Agreement, including, but not limited to credit card debt. STEPHEN shall save and hold BETSY free, harmless and indemnified against said debts and obligations.

5.3 Except as provided for herein, BETSY will be responsible for and pay all individual debts and financial obligations that are, or were, incurred by her prior to or subsequent to the effective date of this Agreement, including, but not limited to credit card debt. BETSY will save and hold STEPHEN free, harmless and indemnified against said debts and obligations.

5.4 The parties acknowledge that except as provided for herein, no joint debts exist and agree that they shall not cause any debts to hereafter be incurred in the name of the other.

5.5 Except as otherwise provided in this Agreement, each party, respectively, shall pay and defray, and bear sole liability for, any and all obligations, debts, encumbrances, liens, expenses, or other costs or liabilities arising from, or otherwise attributable to, the ownership or use of the property assigned or awarded to the party, and the party shall save, indemnify and hold harmless the other party with respect thereto from any and all liability therefore.

5.6 Except as otherwise provided in this Agreement, neither party shall hereafter contract or otherwise incur any debt or liability for which the other party can be held liable, and each party, respectively, shall save, indemnify and hold harmless the other party with respect thereto from any and all liability therefore.

5.7 If either party maintains a credit card for which the other is an authorized user, each party shall remove the other as secondary users on their respective credit cards within thirty days of the entry of the Judgment for Dissolution of Marriage. Neither party shall hereafter contract any debt or liability, whatsoever, for which the other can be held liable. Hereafter, each party shall hold harmless and indemnified of and from any claims, debts, charges or liabilities hereafter contracted by the party.

ARTICLE VI
ATTORNEY'S FEES

Both STEPHEN and BETSY are responsible for payment of their own attorney's fees and costs to his/her attorneys; and stipulates and agrees that each has waived his/her right to a hearing on contribution from the other on the issue of fees and costs pursuant to 750 ILCS 5/503(j).

ARTICLE VII
INCOME TAXES

7.1 Both parties represent and warrant to each other that they have correctly declared all income and properly claimed deductions and duly paid all income taxes, state and federal, on all joint returns heretofore filed by the parties. If there is a deficiency assessment in connection with any of the aforesaid joint returns heretofore filed by the STEPHEN and BETSY, the parties shall be equally responsible for any deficiency determined to be due thereon, together with interest and penalties.

7.2 Both parties shall cooperate in the filing of any amendments to any joint Federal and Illinois State Income Tax Returns previously filed by the parties as may be required. These amended returns shall be prepared and filed jointly by the parties and any and all fees and costs incurred in preparing and filing these joint returns shall be paid equally by the parties.

ARTICLE VIII
EXECUTION OF DOCUMENTS AND MUTUAL RELEASES

That each of the parties agrees that he or she will upon demand by the other at any time hereafter, execute any and all instruments and documents as may be reasonably necessary to release their respective interest in any property belonging to the other, the intention being that the settlement provided for in this agreement shall constitute a complete adjustment of the property rights and all other rights of the parties thereto.

ARTICLE IX
INCORPORATION

This Agreement shall be exhibited to the Court for its consideration in the case between the parties. If the Court approves the Agreement, and dissolves the marriage between the parties, the Agreement shall be incorporated into the Court's Judgment. If a Judgment of Dissolution approving and incorporating this Agreement is not entered in the case between the parties, this Agreement shall be null and void and of no force or effect.

ARTICLE X
WAIVER OF ESTATE CLAIM

10.1 Except as herein otherwise provided, each of the parties hereby waives and relinquishes all rights to act as administrator and administrator-with-the-will-annexed of the estate of the other party, and each of the parties does further relinquish all right to inherit by interstate succession any of the property of which the other party may die seized or possessed, and should either of the parties hereto die interstate, this agreement shall operate as a relinquishment of all right of the surviving party hereafter to apply for letters of administration in any form, and the estate of such deceased party, in the same manner as through the parties hereto had never been married, each of the parties hereto respectfully, reserving the right to dispose, by testament or otherwise of his or her respective property in any way that he or she may see fit, without any restriction or limitation whatsoever, provided, however, that nothing herein contained shall operate or be construed as a waiver or release by either party of the obligation of the other to comply with the terms of this agreement, or the rights of either party under this agreement.

10.2 In the event any court alters, changes or modifies any portion of this agreement at any time prior to the entry of a judgment for dissolution of marriage, then any pending proceeding before such court shall be suspended so that BETSY and STEPHEN shall have an opportunity to consider said alteration, change or modification by said court and, if necessary, renegotiate all or part of this agreement. In any event, if any court alters changes or modifies any portion of this agreement at any time prior to the entry of a judgment

for dissolution of marriage, then the entire agreement shall become voidable at the option of BETSY and STEPHEN.

ARTICLE XI
EFFECTIVE DATE

This Agreement may be executed in one or more counterparts, which shall together constitute the original thereof. The effective date of this Agreement shall be the date on which a Judgment for Dissolution of Marriage is entered by the Court in the case between the parties approving and incorporating this Agreement, and the provisions of this Agreement shall only come into full force and effect on such date.

ARTICLE XII
ENFORCEABILITY

The terms of this Agreement shall be enforceable as an independent contract and by all remedies available for the enforcement of a judgment, including but not limited to contempt proceedings.

IN WITNESS WHEREOF, BETSY and STEPHEN have hereunto set their respective hands and seal this 29 day of January, 2016.

STEPHEN D. DYNAKO

BETSY C. DYNAKO

Subscribed, sworn to and acknowledged before me by Stephen D. Dynako on 1/29, 2016.

Notary Public

My Commission Expires: 1/21/2024 (Seal)

Subscribed, sworn to and acknowledged before me by Betsy C. Dynako on 2/8, 2016.

Notary Public

My Commission Expires: (Seal)

OFFICIAL SEAL
PETER R OLSON
Notary Public - State of Illinois
My Commission Expires: 04/08/2019

This document was prepared by:

Chicago Family Law Group, LLC
Attorney for Petitioner
10 S. LaSalle, Suite 3300
Chicago, IL 60603
(312) 893-5888
Attorney No. 49901

NANCI LYONS
NOTARY PUBLIC
SEAL
STATE OF INDIANA - COUNTY OF LAPORTE
MY COMMISSION EXPIRES JAN 21, 2024

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

A. That the bonds of matrimony existing between the Petitioner, Betsy Dynako, and the Respondent, Stephen Dynako, are hereby dissolved, and the same are dissolved accordingly, and the marriage of the parties is terminated.

B. That the Marital Settlement Agreement hereinabove contained is hereby, in all respects, approved, confirmed, ratified and adopted as the Judgment of this Court to the same extent and with the same force and effect as if the provisions contained in said agreement was set forth in this paragraph of this Judgment, and each and every provision thereof are binding upon each of the parties hereto, and each of the said parties shall do and perform all of the acts undertaken and carry out all of the provisions contained in the above said Marital Settlement Agreement which is made a part of this Judgment.

C. That the Petitioner and the Respondent shall carry out all of the terms, provisions and conditions of this Judgment, and each of the parties shall execute, acknowledge and deliver good and sufficient instruments necessary or proper to vest the titles and estates in the respective parties hereto as provided in the Marital Settlement Agreement hereinabove contained, an hereafter at any time, and from time to time, to execute, acknowledge and deliver any and all documents which may be necessary or proper to carry out the purpose of said Agreement, and establish of record the sole and separate ownership of the several properties of said parties in the manner herein agreed and provided.

D. Petitioner and Respondent shall perform, execute, and carry out the provisions of the Agreements incorporated herein.

E. Petitioner Betsy Dynako is given leave to resume use of her former name, Betsy Carina Zacate, if she so desires.

F. That this Court shall retain jurisdiction of the subject matter of this cause and of the parties hereto for the purposes of enforcing the terms of this Judgment for Dissolution of Marriage.

ENTER:

JUDGE Date 2/8/16

Chicago Family Law Group, LLC
Attorney for Petitioner
10 S. LaSalle Street, #3300
Chicago, Illinois 60603
(312) 893-5888
Attorney No. 49901

Attorney #38787

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-DOMESTIC RELATIONS DIVISION

IN RE: THE FORMER MARRIAGE OF

Betsy Dynako
PETITIONER

AND

Stephen Dynako,
RESPONDENT

No: 2015 D 002531

Calendar 61

Courtroom Number: <<3004>>
Hearing Date: 1/7/2019 10:00 AM - 10:00 AM

MOTION TO MODIFY SUPPORT

Respondent Stephen Dynako, by his attorney August Staas, pursuant to Section 510 of the Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/510, and pursuant to Section 2-1401 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-1401, moves this Court to terminate or modify the maintenance order entered by this Court on February 8, 2016, and in support thereof states:

1. On February 8, 2016, this Court entered its judgment for dissolving the marriage of the parties.
2. The Judgment incorporated a Marital Settlement Agreement.
1. The Judgment requires Respondent to pay Petitioner maintenance in the amount of $60,000 per year for four years, then $50,000 per year in the fifth year, $40,000 per year in the sixth year, $30,000 per year in the seventh year, and $20,000 per year in the eighth year following entry of the judgment. Respondent was to be responsible for all tax liability on said maintenance payments, with the maintenance payments tax free to Petitioner.

3. At the time Petitioner filed for dissolution, continuing through the time Petitioner put the dissolution action on the resolution calendar, revived the dissolution action, and through the time the Judgment was entered, Respondent was without formal employment. Instead, Respondent was seeking to build a consulting business from scratch, with the support and approval of Petitioner. See Exhibit 2 to Respondent's Affidavit.
4. In the dissolution judgment, Petitioner received all the substantial marital assets, except for half of Respondent's 401(k) and three defined-benefit pension plans in the name of Respondent.
5. Because Respondent was without substantial assets, and had been without any substantial income for almost a year at the time of the Judgment, by logical necessity his payment of maintenance was predicated on his future success in either building up his consulting business or in finding another source of income. That success was highly contingent at the time Petitioner filed her Petition and at the time the Judgment was entered.
6. At all times relevant hereto, Section 502(f) of the Illinois Marriage and Dissolution of Marriage Act provided, in pertinent part, as follows:

   The parties may provide that maintenance is non-modifiable in amount, duration, or both. If the parties do not provide that maintenance is non-modifiable in amount, duration, or both, then those terms are modifiable upon a substantial change of circumstances.
7. The settlement agreement did not provide "that maintenance is non-modifiable in amount, duration, or both." Instead, it provides: "Said maintenance payments shall be non-modifiable pursuant to Section 502(f) of the Illinois Marriage and Dissolution of Marriage Act," without specifying, as the statute requires, that the non-modifiability applies to amount, duration, or both.

8. Because the provision does not comply with the statutory requirement, and does not provide that maintenance is non-modifiable *in amount, duration, or both*, therefore, by the express terms of the statute, the maintenance obligation is modifiable.

9. The circumstances have changed as follows:

    a. There has been a failure of the necessary predicate of the maintenance obligation, in that Respondent has been unsuccessful in his consulting practice;

    b. Respondent has been without steady income for more than three and a half years, and his lack of steady employment for such an extended period of time coupled with his advancing age has compromised his ability to find employment at a level sufficient to support the maintenance obligation;

    c. Respondent's financial circumstances have deteriorated to the point of desperation.

    d. Respondent has liquidated the only substantial assets awarded to him in the divorce judgment – his retirement accounts – and turned them over to Petitioner in an effort to keep up with the maintenance obligation set forth in the judgment.

    e. Respondent's gross income is $3,000 per month. He has been paying Petitioner $1,500 of this gross income.

    f. After taxes and payment of $1,500 toward his maintenance obligation, Respondent has only approximately $800 per month to live on.

    g. Even so, Respondent is falling behind on his maintenance obligation by $3,500 per month, plus interest and Petitioner's attorney's fees.

    h. Respondent has been diligently seeking more lucrative employment, and has been utterly unable to do so.

i. In addition, Respondent has been seeking odd jobs, shoveling snow, raking leaves, and moving furniture, and turning over 100% of his income from those odd jobs to Petitioner, and still is falling further behind by thousands of dollars every month.

j. The maintenance obligation as written is impossible for Respondent to perform.

k. On information and belief, Petitioner has substantial assets and is well able to earn an income to support herself.

10. The non-modifiability provision of the marital settlement agreement is unconscionable, for the reasons set forth above and in the supporting affidavit.

11. At all times relevant hereto, Section 504(b-7) of the Illinois Marriage and Dissolution of Marriage Act provided, in pertinent part:

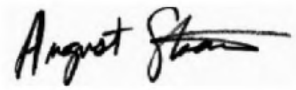
> Any new or existing maintenance order including any unallocated maintenance and child support order entered by the court under this Section shall be deemed to be a series of judgments against the person obligated to pay support thereunder. Each such judgment to be in the amount of each payment or installment of support **and each such judgment to be deemed entered as of the date the corresponding payment or installment becomes due under the terms of the support order** . . . .

12. Therefore, the two-year limit set forth in Section 2-1401 for seeking relief from judgments does not apply to any **future** installments of maintenance, as those judgments have not yet been entered.

13. Section 502(c) permits this Court to make orders revising the agreement of the parties regarding maintenance if it finds the agreement to be unconscionable.

14. Unconscionability is to be determined at the time of the entry of judgment, which, with respect to the maintenance payments due in the future, is the date the corresponding payment becomes due.

WHEREFORE, Respondent Stephen Dynako prays this Court enter an order modifying the maintenance obligation set forth in the Marital Settlement Agreement, to a level in accordance with statute, with costs and fees, and for such other relief as may be just.



August Staas

Atty #38787
August Staas
Attorney for Respondent
350 South Northwest Highway #300
Park Ridge, IL 60068
(312) 233-2732
august@staas.com

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Stephen Dynako

Stephen Dynako

August Staas
Attorney for Respondent
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Park Ridge, IL 60068
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august@staas.com
Atty # 38787

FILED
4/2/2019 9:37 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2015D002531

Attorney #38787

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-DOMESTIC RELATIONS DIVISION

IN RE: THE FORMER MARRIAGE OF	
Betsy Dynako PETITIONER	No: 2015 D 002531
AND	Calendar 61
Stephen Dynako, RESPONDENT	

RESPONDENT'S MEMORANDUM OF LAW
IN SUPPORT OF
MOTION TO MODIFY SUPPORT

Respondent Stephen Dynako, by his attorney, August Staas, submits this Memorandum of Law in support of his Motion to Modify Maintenance.

1. The Non-Modifiability Provision in the Marital Settlement Agreement fails to comply with the requirements of the Statute, and is therefore of no effect.

a. The provision must explicitly specify that it applies to duration, amount, or both.

Petitioner makes much of a paragraph in the Marital Settlement Agreement stating that maintenance is non-modifiable.

The statutory provision governing non-modifiability in a Marital Settlement Agreement is Section 502(f), which provides:

> The parties may provide that maintenance is non-modifiable *in amount, duration, or both*. **If the parties do not provide that maintenance is non-modifiable *in amount, duration, or both*, then those terms are modifiable upon a substantial change of circumstances.**
>
> (emphasis added).

The meaning of the statute is clear and unambiguous. The statute requires that, in order to be effective, the non-modifiability provision must specify one of three alternatives: either the provision is non-modifiable in amount, or it is non-modifiable in duration, or it is non-modifiable in both amount and duration.

If the non-modifiability provision makes no such designation, the statute specifically states that such non-modifiability provision is ineffective, and the maintenance provision may be modified.

Effective January 1, 2016 – before entry of the judgment in this case – the legislature changed the Illinois Marriage and Dissolution of Marriage Act.

The statute previously provided that a provision for maintenance may be rendered non-modifiable in the same fashion, with the same language, as other provisions in a marital settlement agreement, as follows:

> Except for terms concerning the support, custody, or visitation of children, the judgment may expressly preclude or limit modification of terms set forth in the judgment if the agreement so provides. Otherwise, terms of an agreement set forth in the judgment are automatically modified by modification of the judgment.

With the amendment effective January 1, 2016, the legislature dramatically changed this requirements for non-modifiability. Now, the terms of the marital settlement agreement with respect to property settlement are always non-modifiable. But there is a new requirement to render maintenance non-modifiable:

> The parties may provide that maintenance is non-modifiable in amount, duration, or both. If the parties do not provide that maintenance is non-modifiable in amount, duration, or both, then those terms are modifiable upon a substantial change of circumstances.

The legislature knew what it was doing when it added the requirement that, to be effective, an agreement to make maintenance non-modifiable must designate whether it is non-modifiable in amount, duration, or both.

In fact, as if to emphasize this requirement, the statute then repeats the requirement, providing that a purported non-modifiability provision that does NOT specify whether the non-modifiability applies to amount, or duration, or both, is not effective, and that maintenance without such specific designation that non-modifiability applies to amount, or duration, or both, is modifiable.

Yet Petitioner would have this Court ignore this statutory requirement.

This the Court cannot do.

The Court must apply the clear and unambiguous language of the statute. "When the statutory language is clear and unambiguous, [the court] must apply it as written, without resort to extrinsic aids of statutory construction. People v Collins, 214 Ill.2d 206, 214 (2005). Here, the language could not be more clear. The legislature spoke not once, but twice.

Even if the Court were to find the provision to be ambiguous (and, again, emphatically, the statute is not ambiguous and could not be more clear), the rules of statutory construction require the Court to interpret the statute to give all the terms of the statute effect. If the statutory language is ambiguous, [the court] construe[s] the statute to avoid rendering any part meaningless or superfluous. People v. Jones, 214 Ill.2d 187, 193 (2005).

Here, Petitioner asks this Court to simply pretend the non-existence of the requirement that the non-modifiability agreement, to be effective, must designate whether the maintenance is to be non-modifiable in duration, or amount, or both. This Court cannot do so.

b. <u>The Court must not rewrite the MSA to supply the missing designation.</u>

Petitioner is asking the Court to insert words into the agreement that are not there: that maintenance is to be non-modifiable in **both** amount and duration. But this would require the

Court to completely override the plain language of the statute, which requires that the parties agree to this designation.

i. Petitioner Drafted the Agreement

The maintenance provision is silent as to the designation of non-modifiability as to duration, amount, or both. If this Court were to insert that language, it would violate the rule of statutory construction, that ambiguity in the plain language of the contract is to be construed against the drafter of the instrument. International Supply Co. v. Campbell, 391 Ill. App. 3d 439, 452 (2009)

Here, Petitioner's counsel drafted the instrument. Moreover, Respondent was not represented by counsel. Moreover, Petitioner's counsel and Petitioner both told Respondent, you can trust us. We are protecting your interests. You don't need to worry about the legalese of these papers. Just sign. This agreement is the same as in the informal letter you signed in July, 2014, even though, on this point, it is diametrically the opposite of that July, 2014 agreement. To construe the non-modifiability provision as Petitioner desires would be to reward her deceit.

ii. *There is no knowing waiver.*

A non-modifiability provision is, in effect, a waiver of Respondent's normal right to petition for modification of maintenance. Absent an agreement complying with the requirements of Section 502(f), the Court is without authority to make maintenance non-modifiable. Blum v Koster, Ill. 105795 (2009).

A non-modifiability provision in a marital settlement agreement is a waiver of that right.

Waiver is defined as the intentional relinquishment of a known right. Vaughn v. Speaker 126 Ill. 2d 150, 161 (1989). The burden is on the one claiming waiver to prove the other party knew the right he was relinquishing, and intended to so relinquish.

Here, Petitioner hid from Respondent that he was giving up his right to seek modification of the maintenance obligation.

c. A Non-Modifiable Maintenance Award Is A Super-Judgment.

There's an additional reason the new statutory requirement must be given effect, and the non-modifiability provision be held ineffective.

The new statutory requirement that a non-modifiability provision regarding maintenance must clearly, unambiguously, and specifically designate that maintenance is non-modifiable as to amount, duration, or both, is an important recognition that a non-modifiable maintenance award creates an awesome, ferocious super-judgment.

There is no other financial judgment in the civil court system with the same force as a non-modifiable maintenance award.

An ordinary judgment can be discharged in bankruptcy. A maintenance obligation cannot be discharged.

An ordinary judgment cannot reach many of the assets of a judgment debtor, including retirement plans. As we have seen in this case, the Court can and will take all the retirement accounts of the maintenance obligor.

The Marriage and Dissolution of Marriage Act prohibits any agreement that child support cannot be modified.

Petitioner wants this Court to bend over backwards, to violate the plain terms of the statute, to add words into the marital settlement agreement that are not there to the prejudice of Respondent, all to give her a judgment far beyond this Court's power to grant her absent the paper she had Respondent sign through deceit.

2. The Non-Modifiability Provision Is Unconscionable and Should Be Rewritten

An unconscionable Marital Settlement Agreement is '"one 'which no man in his senses, not under delusion, would make, on the one hand, and which no fair and honest man would accept, on the other.' . . . The term 'unconscionability' includes 'an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party . . . A contract is unconscionable when it is improvident, totally one-sided or oppressive.' In re Marriage of Carlson, 101 Ill.App.3d 924 (1st Dist 1981).

The facts, as set forth in Respondent's affidavit, are well-corroborated and indisputable:

At the time Petitioner filed her Petition for Dissolution, Respondent had given his notice at work and was about to be unemployed, with the dream of starting a new counseling practice.

The parties had hand-written an agreement for Petitioner's support, which also expressly stated that it could be changed upon one month's notice.

Petitioner told Respondent she had retained a lawyer who would prepare a final judgment incorporating the terms in the handwritten agreement, including the hand-written provision allowing for modification.

Petitioner told Respondent the attorney was kind and compassionate and working "for us". She told Respondent that his signing the papers "will be a loving act that will calm my fears."

Petitioner and her attorney told Respondent there was no need for him to have a lawyer – the lawyer was doing the paperwork "for us" – for both of them.

Petitioner and her attorney told Respondent there was no need for him to go to court.

But, after all this representation to Respondent, Petitioner entered a judgment very different from that which she had told Respondent was being drafted.

As Petitioner well knew, Respondent had no income and no assets other than his retirement, yet the agreement she drafted required him to pay $60,000 per year for four years, then $50,000, $40,000, $30,000, and $20,000, AND he was to pay the tax liability for all these payments AND it was to be non-modifiable.

This is the very incarnation of an agreement that is no person in his senses, not under delusion, would make, on the one hand, and which no fair and honest person would accept, on the other, that is improvident, totally one-sided, AND oppressive.

The degree of one-sidedness of this agreement, procured by Petitioner's deception, may be illustrated by the vast distance between this agreement and what this Court could have done absent the agreement.

Under the guidelines in force at the time, Respondent would have been subject to maintenance calculated as 30% of his gross income less 20% of Petitioner's gross income. That would have resulted in a maintenance obligation in the neighborhood of zero.

The statute, then as now, prohibited under any circumstances an award of maintenance that would result in Petitioner receiving more than 40% of the parties' combined income. The agreement entered by Petitioner resulted in her receiving more than 600% of the parties combined income.

The statute, then as now, prohibited the Court from making a maintenance award non-modifiable absent an agreement of the parties.

The statute then prohibited the Court from ordering that maintenance be taxable to obligor absent an agreement of the parties.

In every way, the maintenance obligation was far beyond that which this Court could have done. The Court's signature on the judgment was procured by Petitioner's deception and Respondent's naivete.

It must be emphasized that Petitioner and her attorney wrote and filed Respondent's appearance form, that they told Respondent he needn't bother to come to court, that they assured him the agreement was simply legalese for what they had written by hand.

It must be further emphasized that Petitioner and her counsel carefully avoided making any representation or recital in the marital settlement agreement as to Respondent's income or assets.

It must be emphasized that there was no court reporter present at the prove-up.

In short, Petitioner carefully baffled any potential inquiry or review by the Court into the factual predicate of what was being ordered.

The nature of the deception practiced upon Respondent is best illustrated by the dramatic difference in tone. Before the judgment, when she was begging him to sign the agreement, her words were all love and cooperation and support and solicitousness. Since the judgment was entered and she had used this Court's power to strip him of his last penny, her words are all rage-filled demands that this Court put the penniless Respondent in jail for no crime other than his having no more money to give her.

The statute authorizes the Court to rewrite a marital settlement agreement to remedy unconscionable provisions.

Under the circumstances as set forth herein and in Respondent's affidavit, the ongoing maintenance obligation is unconscionable, as is the non-modifiability provision.

Both should be rewritten and removed.

Section 507(b) of the Marriage and Dissolution of Marriage Act provides:

> Any new or existing maintenance order including any unallocated maintenance and child support order entered by the court under this Section shall be deemed to be a series of judgments against the person obligated to pay support thereunder, each such judgment to be in the amount of each payment or installment of support and **each such judgment to be deemed entered as of the date the corresponding payment or installment becomes due under the terms of the support order** . . . .

The Court should therefore determine the agreement to be unconscionable and therefore subject to reformation as of the date of Respondent's Motion to Modify, namely, December 20, 2018, or, in the alternative, two years prior to December 20, 2018, pursuant to Section 2-1401 of the Illinois Code of Civil Procedure.

3. There Has Been a Substantial Change in Circumstances

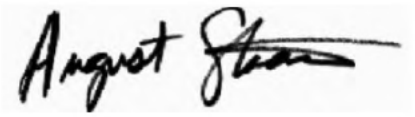
As set forth in Respondent's Motion to Modify Support, the circumstances of the parties have changed. With each passing month, Respondent's skills in his previous profession become increasingly stale. He can no longer entertain a reasonable hope of future employment at the level he and Petitioner previously enjoyed.

The only rationale for continuing this outrageous maintenance judgment is Petitioner's endlessly repeated argument that Respondent was a sucker to have believed the soothing blandishments of Petitioner, and this Court is powerless to do anything to remedy Respondent's Sisyphian burden.

CONCLUSION

The non-modifiability provision is unlawful and unenforceable. The circumstances have changed.

This Court should modify the support order in accordance with the terms of Section 510 based on the current income and resources of the parties.



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FILED
4/2/2019 9:37 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2015D002531

Attorney #38787

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-DOMESTIC RELATIONS DIVISION

IN RE: THE FORMER MARRIAGE OF

Betsy Dynako
PETITIONER

AND

Stephen Dynako,
RESPONDENT

No: 2015 D 002531

Calendar 61

AFFIDAVIT OF STEPHEN DYNAKO

I, Stephen Dynako, being duly sworn and under oath, depose and state as follows:

1. I have personal knowledge of the facts set forth herein and will competently testify thereto.

2. I married Betsy Dynako in the year 2000.

3. By 2012, we were living separate and apart. I continued to support Betsy financially to the best of my ability.

4. In 2014, Betsy proposed, and I signed, a letter, partly typed and partly handwritten, setting forth our agreement regarding finances during our separation. The agreement included the statement, "We give each other 1 month notice regarding changes to this agreement and changes of employment." I attach a copy of that agreement as Exhibit A.

5. In 2014, at the time I entered this agreement, I was working in banking for BMO Harris. I was earning approximately $140,000 per year, gross.

6. By March, 2015, I had become aware that my job was in jeopardy. My immediate superior had let me know that he held me in low regard, organizational changes occurring in my area would result in the departure of my second-line manager (i.e., my immediate superior's manager) who was an ally and advocate for me in the company, and my immediate superior told me that I should look for another job.

7. I told Betsy that I was about to lose my job, and that I believed my best move forward was to develop a career in pastoral counseling. I had received a master's degree in pastoral counseling and I had published a book on pastoral practice and spirituality.

8. In response to this conversation, on March 11, 2015, Betsy wrote me a letter, which I attach as Exhibit B.

9. In that March 11, 2015 letter, Betsy said she had hired a lawyer to file our separation agreement with a court.

10. In that letter, she stated, "The agreement we signed in July 2014, which only put in writing what we were already doing, has served to give me the feeling of assurance I have needed".

11. In that letter, she further stated, "I need your help to have that have the assurance I need [sic.] by making our agreement legal. Mr. Olsen is a kind and compassionate lawyer who has listened to my concerns. He understands that I do not wish to have a divorce. I only want to have the agreement we made recognized by a court as a legal document. I hope you can understand that having our agreement become official will make me feel better. I provided Mr. Olson with the agreement that we signed, the copy that you hand wrote on as well as me. The document that is being supplied to you today by his law office is meant to duplicate that document."

12. Relying on her letter, I believed that the papers given to me by Mr. Olson were, as promised, merely a formal version of our agreement, including what was absolutely essential: We give each other one month notice regarding changes to this agreement and changes of employment.

13. That provision was crucial to me because, as Betsy, Mr. Olson, and I all knew, I was no longer working at BMO Harris and my ability to continue to support her financially was contingent on my dramatically increasing my salary.

14. In her March 11, 2015 letter, Betsy further wrote: It is my understanding that all you need to do at this point is to recommit to what we've already decided in the form of the enclosed document and return it to Mr. Olson's office **per his instructions**. He will file it with the court **for us**. There is no need for either of us to go to court or mess around with a bunch of paperwork, legalese, or fees. Mr. Olson has a clerk that will simply go and file the papers with the court **for us**.

15. Based on this, I understood that Mr. Olson was acting on behalf of both of us in writing up the documents.

16. Mr. Olson encouraged me in this belief.

17. Mr. Olson told me I had to file an appearance with the Court. He prepared the appearance form, gave it to me, told me where to sign it, and he filed it with the court on my behalf.

18. He told me I had to sign a certificate saying the case would be heard as an uncontested matter. He prepared the form and gave it to me and told me where to sign it and he filed it with the court on my behalf.

19. He encouraged me to come to him with any questions I had about the agreement. He never told me that he was representing Betsy alone and never advised me that he had a conflict of interest in giving me advice as to the contents of the documents.

20. Instead, he repeatedly assured me that the agreement he drew up was simply the same as the agreement Betsy and I had signed about my ongoing support of her, with the additional terms of dividing up the property between us.

21. Mr. Olson also told me that I didn't have to appear in court to finalize the papers, but instead that he would take care of it.

22. I gave notice to my job at BMO Harris in March, 2015, and my last day on the job was in April, 2015.

23. After April 2015, I had earnings of less than $3,000 per year in 2016 and 2017.

24. Beginning in January, 2018, continuing to today, I have been contracted by Humanity's Team, a not-for-profit agency, earning $3,000 per month producing transformational educational programs based in spiritual principles.

25. More recently, Humanity's Team has given me additional one-off projects providing additional compensation totaling $6,000 for two different projects.

26. I have been searching for a job in the financial sector that would give me earnings **equivalent** to my former earnings. I have submitted more than a thousand resumes. I have had nearly 200 telephone screenings, which resulted either in declines by the respective companies to interview me further or promises to keep my information on file; about two dozen telephone interviews with recruiters; and zero on-site, in-person interviews.

27. I have contacted numerous executive recruiters. All have told me that it will be very difficult to place me at the level I was previously, because I've been out of work in the financial sector for more than four years. All have told me that, in looking for a job **at the level of my former compensation and expertise**, a candidate must have **current** experience in financial industry regulation, as those regulations are constantly changing. They are of the belief that my absence from that industry, for as long as it has been, makes my previous expertise stale and without value.

28. I have been unable to find work in the financial industry, and I have no basis for believing that I will be able, in the future, to find work sufficient to pay the maintenance at the level called for in the judgment.

29. My consistent and highly-visible work in transformational education for Humanity's Team has earned me a positive reputation and a number of professional connections in this sector. Thus, my most promising prospect for rebuilding a career is continuing to produce programs for Humanity's Team and like organizations. Whether that career will ever compensate me at the income level I had in the financial industry is unknown and not currently likely.

30. If I had known that the divorce papers said that the money I was paying to Betsy could not be modified, I would never have signed the papers.

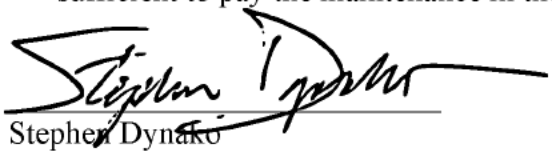
31. At first, after the divorce, I took money out of my retirement accounts to meet the monthly payments to Betsy. When those funds had been exhausted, I told her I didn't have any more money or income to pay her. She then filed a Petition with the Court to hold me in contempt.

32. It was only then that I learned the papers filed with the court were different from the agreement we had made. The agreement we had made said that we could change the agreement with one month's notice. Only then did I learn that the papers filed with the court said that the agreement was not modifiable.

33. I then further was told that I could be put in jail if I couldn't pay the money. Since then, I've been hearing Betsy demand repeatedly that the judge put me in jail because I don't have the money to pay her.

34. The extent of my net worth had been in my retirement accounts, now exhausted. I signed over our jointly-owned condo to Betsy in the divorce, and I have no other assets.

35. Every month that goes by, the likelihood that I can find employment providing compensation sufficient to pay the maintenance in the court order decreases.



Stephen Dynako

Subscribed and sworn to this 2 day of April, 2019

_____

We give each other 1 month notice regarding
Changes to this agreement + changes in employment.

We, Stephen and Betsy Dynako, both agree . . .

That we will have not be in contact with each other unless it is regarding: property, financial matters including changes in employment, or if there is a personal or family emergency until Stephen Dynako ends his extra marital affair with Marie. We both commit to actively keeping one another informed about: property, financial matters including changes in employment. Contact regarding these matters should be made by email with the exception for an emergency than texting is appropriate. A phone call is permitted if both Betsy and Steve agree to one.

Stephen here supplies Betsy with websites, user names, and password for all financial accounts that pertain to him and or Betsy.

Chase.com / sdynako / Bank66one

ingdirect.com / dynako / [redacted] 630833

Bucksamsbank.com / [redacted] / Stephendyn06 / Bank66one

Capital one 360.com
littlestz 1610 pin 2121610

Betsy will take responsibility for paying the utilities associated with 212 West Washington. Steve is to continue to pay the mortgage and monthly assessments associated with the 212. Betsy is to live in unit 1610 and Steve will not enter this unit without permission from Betsy. Steve other wise has full access to 212 including but not limited to the 6th floor storage unit.

Steve will continue depositing $1,726.65 every two weeks into joint checking account ending in 8903. Betsy will leave Steve's mail for him inside of the 6th floor storage unit on the first of each month. Steve agrees to maintain the same level of insurance coverage and deposits to the medical money account that have been maintained for the past several years.

Witness _____ _____

Dated July 25, 2014

Stephen Douglas Dynako

Betsy Carina Dynako

Betsy Takes care of property Taxes for 212.

March 11, 2015

My Dearest Steve,

I want to start by saying I love you very much. That has not changed. My faith in you, myself, and our marriage have not wavered. I understand and accept that we have needed time apart. I have grown significantly in the past year mentally, emotionally, spiritually and artistically. I have missed you of course, but I trust it is for the greater good. I miss just being friends and just talking, not to mention having you as my husband, my lover and confidant.

Your needing to leave BMO Harris for your happiness is something I completely understand. I get your motivation. I do not fault you for doing so but it has triggered a reaction of fear in me. I need to make sure I am protected and cared for. In order to calm myself, with the direction of Melinda, I have decided to seek legal counsel.

I fully believe you intend to continue supporting us. I believe you intended to make sure that our condo is paid for that I'm able to live here, have the monthly the allowance we agreed upon and that I have the health insurance/care I need etc. This continued support from you ensures that I stay healthy, have a home, food, and I'm able to pursue my education.

The reason I am fearful now is that it is hard for me to envision how you will be able to support both of us without the income and insurance BMO Harris has afforded us for so many years since you do not currently have an equal source of income and Cobra insurance coverage is likely more costly than either of us know.

I continue to be supportive of you pursuing your career as a counselor. I believe you will be a success in this pursuit. While you pursue I need to be assured that I have your support to go after my dreams as well by getting an education. Not only do I need that support in prayers and good thoughts but I need your support financially. The agreement we signed in July 2014, which only put in writing what we were already doing, has served to give me the feeling of assurance I have needed for that support until now.

I feel the need to make sure I am taken care of during this time in our marriage so I can be assured that the work I am doing for the future can continue and be successful. You have been able to earn a masters and start on a new career. I want the same for myself. I need your help to have that have the assurance I need by making our agreement legal. Mr. Olsen is a kind and compassionate lawyer who has listened to my concerns. He understands that I do not wish to have a divorce. I only want to have the agreement we made recognized by a court as a legal document. I hope you can understand that having our agreement become official will make me feel better. I provided Mr. Olson with the agreement that we signed, the copy that you hand wrote on as well as me. The document that is being supplied to you today by his law office is meant to *duplicate that* document.

It is my understanding that all you need to do at this point is to recommit to what we've already decided in the form of the enclosed document and return it to Mr. Olson's office per his instructions. He will file it with the court for us. There is no need for either of us to go to court or mess around with a bunch of paperwork, legalese or fees. Mr. Olson has a clerk that will simply go and file the papers with the court for us.

I hope you will sign the enclosed document from Mr. Olson and return it to his office so it can be filed. You doing this will be a loving act that will calm my fears. I will be able to sleep soundly and recover from the accident I was in last week. To me having our agreement simply recognized by a court is a win win. It is quick, easy and cheap. It will mean that nothing needs to change between us and we can both continue forward as we have already agreed. We can each stay focused and continue to grow, sadly still while apart, so we can have the fulfilling lives we want and return to each other one day whole.

FILED
4/30/2019 11:40 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2015D002531

2 #50696

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-DOMESTIC RELATIONS DIVISION

4883305

IN RE: THE MARRIAGE OF)
)
BETSY DYNAKO, n/k/a)
)
BETSY ZACATE,)
)
Petitioner,)
and) NO.: 15 D 2531
)
STEPHEN DYNAKO,)
)
Respondent.)

RESPONSE TO AFFIDAVIT OF STEPHEN DYNAKO

NOW COMES the Petitioner BETSY DYNAKO, who is now known as BETSY ZACATE, by and through her attorney THOMAS H. JOENS, and as and for Petitioner's Response to Affidavit of Stephen Dynako, states to the Court as follows:

1. Petitioner admits the allegations of paragraph one.

2. Petitioner admits the allegations of paragraph two.

3. Petitioner admits the allegations of paragraph three.

4. Petitioner admits the allegations of paragraph four.

5. Petitioner admits the allegations of paragraph five.

6. Petitioner denies the allegations of the first sentence of paragraph six, and Petitioner affirmatively states that Respondent quit his job because he was unhappy with

his job. Petitioner has no knowledge as to the truth or falsity of the allegations of the second sentence of paragraph six.

7. In response to the first sentence of paragraph seven, Petitioner denies that Respondent told Petitioner that Petitioner was about to lose his job; Petitioner has no knowledge as to the truth or falsity of the other allegations of the first sentence of paragraph seven. Petitioner admits the allegations of the second sentence of paragraph seven.

8. Petitioner admits the allegations of paragraph eight. Petitioner affirmatively states that in her March 11, 2015 letter to Respondent, Petitioner states:

a) "I need to make sure I am protected and cared for."

b) "I fully believe you intend to continue supporting us. I believe you intended to make sure that our condo is paid for that I'm able to live here, have the monthly the allowance (sic) we agreed upon and that I have the health insurance/care I need etc. This continued support from you ensures that I stay healthy, have a home, food, and I'm able to pursue my education."

c) "While you pursue (your career as a counselor), I need to be assured that I have your support to go after my dreams as well by getting an education. Not only do I need that support in prayers and good thoughts but I need your support financially."

d) "I feel the need to make sure I am taken care of during this time in our marriage so I can be assured that the work I am doing for the future can continue and be successful. You have been able to earn a masters and start on a new career. I want the same for myself. I need your help to have that have (sic) the assurance I need by making our agreement legal."

9. Petitioner admits the allegations of paragraph nine.

10. Petitioner admits the allegations of paragraph ten.

11. Petitioner admits the allegations of paragraph eleven.

12. In response to paragraph twelve, Petitioner has no knowledge as to whether or not Respondent relied on Petitioner's letter, although as set forth above, Petitioner expressed her concerns in her March 11, 2015 letter to Respondent, that Respondent needed to make sure that Respondent would be able to continue to support Petitioner. It is difficult to determine if the "papers given to me by Mr. Olson" that Respondent refers to are the Temporary Agreed Order entered by the Honorable David Haracz on April 2, 2015, or the Marital Settlement Agreement which Respondent signed on January 29, 2016, which was incorporated into the parties' Judgment for Dissolution of Marriage that was entered on February 8, 2016. Assuming the papers that Respondent is referring to is the April 2, 2015 Temporary Agreed Order, it is assumed that Respondent read this six paragraph Court Order consisting of little more than one page, before Respondent signed the Temporary Agreed Order.

13. In response to paragraph thirteen, Petitioner has no knowledge as to whether a provision was crucial to Respondent, but presumably Respondent was intelligent enough to read any documents that were presented to him for his review and approval, before Respondent signed those documents. The parties negotiated with each other to determine the exact language to be set forth in the Temporary Agreed Order that was ultimately entered by Judge Haracz on April 2, 2015.

14. Petitioner admits the allegations of paragraph fourteen.

15. Petitioner has no knowledge as to whether Respondent truly believed that Petitioner's attorney was acting on behalf of both parties in this case, but clearly an attorney cannot represent both parties in a dissolution of marriage case.

16. Petitioner denies the allegations of paragraph sixteen, and Petitioner affirmatively states that it is unlikely that an attorney with substantial experience in family law matters would inform a Respondent in a dissolution of marriage case that the attorney is representing both parties in the case.

17. Petitioner admits the allegations of paragraph seventeen, but Petitioner affirmatively states that these actions by Petitioner's attorney were presumably made as a convenience for Respondent.

18. In response to paragraph eighteen, Petitioner assumes that most of the allegations are true, although Petitioner has no personal knowledge of same; Petitioner affirmatively states that the Certification and Agreement by Counsel/Stipulation and Request to Hear Uncontested Cause form was not filed on behalf of Respondent, was as a convenience for Respondent. Petitioner further affirmatively states that the Certification/ Stipulation form that the parties both signed states, in pertinent part:

> "We, the undersigned parties, STIPULATE AND AGREE that all matters pending between us have been settled, agreed and compromised, freely and voluntarily after full disclosure, and we hereby REQUEST that this cause be heard as an uncontested matter."

19. Petitioner has no knowledge as the truth or falsity of the allegations of paragraph nineteen, but Petitioner affirmatively states that it is unlikely that an attorney with substantial experience in family law matters would not inform a Respondent in a

dissolution of marriage case that the attorney is representing only the Petitioner in the case, and the attorney is not representing the Respondent in the matter.

20. Petitioner has no knowledge as to the truth or falsity of the allegations of paragraph twenty; Petitioner affirmatively states that a clear comparison of the "agreement (Petitioner) and I had signed about my ongoing support of her" and the parties' Marital Settlement Agreement, would reveal that these two documents are not the same. It is assumed that Respondent reads documents presented to him, before Respondent signs those documents. Is it Respondent's position that he didn't read the Marital Settlement Agreement before he signed the document?

21. Petitioner has no knowledge as to the truth or falsity of the allegations of paragraph twenty-one, but Petitioner affirmatively states a Respondent typically does not have to appear in Court for the prove-up of the case, if all of the necessary documents have previously been signed by Respondent.

22. Petitioner admits the allegations of paragraph twenty-two.

23. Petitioner has no knowledge as to the truth or falsity of the allegations of paragraph twenty-three.

24. Petitioner has no knowledge as to the truth or falsity of the allegations of paragraph twenty-four.

25. Petitioner has no knowledge as to the truth or falsity of the allegations of paragraph twenty-five.

26. In response to the first sentence of paragraph twenty-six, Petitioner affirmatively states that it is not necessary for Respondent to obtain a job in the financial sector that would provide Respondent with earnings equivalent to his former earnings.

Petitioner has no knowledge as to the truth or falsity of the allegations of the second and third sentences of paragraph twenty-six.

27. Petitioner has no knowledge as to the truth or falsity of the allegations of twenty-seven; Petitioner affirmatively states that it is not necessary for Respondent to obtain a job at the level of Respondent's former compensation and expertise.

28. Petitioner has no knowledge as to the truth or falsity of the allegations of paragraph twenty-eight.

29. Petitioner has no knowledge as to the truth or falsity of the allegations of paragraph twenty-nine.

30. Petitioner denies the allegations of paragraph thirty. Petitioner affirmatively states that **on its face** the Marital Settlement Agreement states that Respondent's obligation to pay maintenance to Petitioner is non-modifiable, that Respondent had years of experience in reviewing legal documents when he signed the Marital Settlement Agreement, it is assumed that Respondent can read English, and with a Master's Degree it is assumed that Respondent understands the clear language of a legal document. In addition, the provisions of the Marital Settlement Agreement, including the maintenance portion of the Marital Settlement Agreement, were negotiated by the parties **for months** through emails, face-to-face meetings, by telephone, and with the assistance of a therapist.

31. Petitioner has no knowledge as to the truth or falsity of the allegations of the first sentence of paragraph thirty-one. Petitioner neither admits nor denies the allegations of the second sentence of paragraph thirty-one, but demands strict proof thereof. In response to the last sentence of paragraph thirty-one, Petitioner affirmatively

states that she filed her Petition for Rule to Show Cause against Respondent about six months after Respondent fell behind in Respondent's payments to Petitioner.

32. In response to paragraph thirty-two, Petitioner finds it incredible that Respondent is alleging that he did not read and understand the parties' Marital Settlement Agreement that Respondent signed on January 29, 2016, until some time after November 7, 2017. This is despite the fact that the parties actually negotiated the terms of the Marital Settlement Agreement for months before the document was finalized.

33. Petitioner admits the allegations of paragraph thirty-three.

34. In response to the first sentence of paragraph thirty-four, Petitioner affirmatively states that Respondent maintains his IBM pension and thus, Respondent's retirement accounts are not exhausted. In response to the second sentence of paragraph thirty-four, Petitioner affirmatively states that Respondent received about $17,000.00 as and for Respondent's interest in the parties' condominium, and that Petitioner was ultimately made responsible for about $30,000.00 in Respondent's business debt which was rolled into the mortgage on the parties' condominium. In addition, Respondent received various bank accounts, stocks, stock options and other assets in respondent's name which were not specifically known to Petitioner at the time of the entry of the parties' Judgment for Dissolution of Marriage.

35. Petitioner has no knowledge as to the truth or falsity of the allegations of paragraph thirty-five.

BETSY ZACATE

THOMAS H. JOENS

CERTIFICATION

I, BETSY ZACATE, state that I am the Petitioner in the above-captioned case, that I have read the above and foregoing Response to Affidavit of Stephen Dynako, and that under penalties as provided by Section 5/1-109 of the Illinois Code of Civil Procedure, Petitioner states that the allegations contained herein are true and correct to the best of her knowledge and belief.

BETSY ZACATE

Atty. No. 50696
Thomas H. Joens
Attorney for Petitioner
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FILED
4/30/2019 11:40 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2015D002531

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#50696

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-DOMESTIC RELATIONS DIVISION

4883305

IN RE: THE MARRIAGE OF	)	
	)	
BETSY DYNAKO, n/k/a	)	
	)	
BETSY ZACATE,	)	
	)	
Petitioner,	)	
and	)	NO.: 15 D 2531
	)	
STEPHEN DYNAKO,	)	
	)	
Respondent.	)	

RESPONSE TO RESPONDENT'S MOTION TO MODIFY SUPPORT

NOW COMES the Petitioner BETSY DYNAKO, who is now known as BETSY ZACATE, by and through her attorney THOMAS H. JOENS, and as and for Petitioner's Response to Respondent's Motion to Modify Support, states to the Court as follows:

1. Petitioner admits the allegations of the first paragraph one.

2. Petitioner admits the allegations of paragraph two.

1. Petitioner admits the allegations of the second paragraph one.

3. Petitioner denies the allegations of the first sentence of paragraph three, and Petitioner affirmatively states that Respondent was formally employed when Petitioner filed her Petition for Dissolution of Marriage in the instant case on March 20, 2015. In response to the second sentence of paragraph three, Petitioner affirmatively

states that Petitioner's "support and approval" of Respondent "seeking to build a consulting business from scratch" was predicated on Respondent being able to continue to support Petitioner. In the March 11, 2015 letter from Petitioner to Respondent, Petitioner states the following:

a) "I need to make sure I am protected and cared for."

b) "I fully believe you intend to continue supporting us. I believe you intended to make sure that our condo is paid for that I'm able to live here, have the monthly the allowance (sic) we agreed upon and that I have the health insurance/care I need etc. This continued support from you ensures that I stay healthy, have a home, food, and I'm able to pursue my education."

c) "While you pursue (your career as a counselor), I need to be assured that I have your support to go after my dreams as well by getting an education. Not only do I need that support in prayers and good thoughts but I need your support financially."

d) "I feel the need to make sure I am taken care of during this time in our marriage so I can be assured that the work I am doing for the future can continue and be successful. You have been able to earn a masters and start on a new career. I want the same for myself. I need your help to have that have (sic) the assurance I need by making our agreement legal."

4. Petitioner denies the allegations of paragraph four, and Petitioner affirmatively states that as result of the parties' Judgment for Dissolution of Marriage, Respondent received not only one-half of the funds in Respondent's 401(k) plan and Respondent's three defined benefit pension plans, but Respondent also received around $17,000.00 from Petitioner for a buyout of Respondent's interest in the parties'

condominium. In addition, Respondent received various bank accounts, stocks, stock options, and other assets in Respondent's name only which were not specifically known to Petitioner at the time of the entry of the parties' Judgment for Dissolution of Marriage.

5. Petitioner denies the allegations of the first sentence of paragraph five, Petitioner affirmatively states that Respondent's payment of maintenance to Petitioner was not predicated on the factors set forth by Respondent in the first sentence of paragraph five but was predicated on Petitioner's need to be supported by Respondent, and Petitioner further affirmatively states that the Marital Settlement Agreement that both parties signed did not state that Respondent's maintenance payments to Petitioner were based on Respondent on either Respondent's future success in building up Respondent's consulting business or Respondent finding another source of income. Petitioner denies the allegations of the second sentence of paragraph five, and Petitioner affirmatively states that Respondent's "future success" was not set forth as a requirement for Respondent to be able to satisfy Respondent's obligation to pay maintenance to Petitioner as set forth in the parties' Judgment for Dissolution of Marriage.

6. Petitioner admits the allegations of paragraph six.

7. Petitioner admits the allegations of the first sentence of paragraph seven. In response to the second sentence of paragraph seven, Petitioner affirmatively states that the parties' Marital Settlement Agreement clearly provides that Respondent's maintenance payments to Petitioner "shall be non-modifiable pursuant to Section 502(f) of the Illinois Marriage and Dissolution of Marriage Act," and that this language is clear and unambiguous.

8. Petitioner denies the allegations of paragraph eight.

9. In response to the first portion of paragraph nine, Petitioner affirmatively states that the changes that are alleged by Respondent are either irrelevant or favor Petitioner's position.

a. In response to paragraph nine a, Petitioner affirmatively states that there is not a "predicate obligation" for Respondent to be required to pay maintenance in the parties' Judgment for Dissolution of Marriage.

b. In response to paragraph nine b, Petitioner affirmatively states that these allegations are irrelevant in that Respondent's obligation to pay maintenance to Petitioner is non-modifiable by its very terms, and Petitioner further affirmatively states that the substantial change of circumstances that Respondent alleges are that Respondent was unemployed at the time of the entry of the parties' Judgment for Dissolution of Marriage, and Respondent is now employed on a full-time basis.

c. Petitioner denies the allegations of paragraph nine c, and Petitioner affirmatively states that Respondent's alleged desperation may be based on the fact that Respondent refused to seek appropriate employment after the entry of the parties' Judgment for Dissolution of Marriage.

d. Petitioner denies the allegations of paragraph nine d, and Petitioner affirmatively states that Respondent did not liquidate his IBM pension and turn it over to Petitioner to keep up with Respondent's maintenance obligation, and on information and belief, Respondent did not turn over to Petitioner other assets that are in Respondent's possession and/or under Respondent's control.

e. Petitioner has no knowledge as to the truth or falsity of the allegations of paragraph nine e.

f. Petitioner has no knowledge as to the truth or falsity of the allegations of paragraph nine f.

g. Petitioner admits the allegations of paragraph nine g that Respondent is falling behind in his maintenance obligations to Petitioner every month plus interest and attorney's fees, but Petitioner denies the amount that Respondent alleges in paragraph seven g.

h. Petitioner denies the allegations of paragraph nine h.

i. Petitioner has no knowledge as to the truth or falsity of the allegations of paragraph nine i.

j. Petitioner denies the allegations of paragraph nine j.

k. Petitioner denies the allegations of paragraph nine k, and Petitioner affirmatively states that she suffers from a variety of serious health issues which make it difficult for Petitioner to earn an income to support herself. Petitioner is considered disabled by the State of Illinois, and Petitioner is obtaining employment assistance from the Illinois Department of Rehabilitation Services. Petitioner has not had regular part-time employment since Thanksgiving of 2018. Petitioner has never been employed on a full-time basis.

10 Petitioner denies the allegations of paragraph ten.

11. Petitioner admits the allegations of paragraph eleven, and Petitioner affirmatively states that this section is not relevant to the circumstances of the instant case.

12. Petitioner denies the allegations of paragraph twelve.

13. Petitioner admits the allegations of paragraph thirteen, but Petitioner affirmatively states that when the prove-up of this case took place on February 8, 2016, the Honorable David E. Haracz did not find the parties' Marital Settlement Agreement to be unconscionable.

14. Petitioner admits the allegations of paragraph fourteen that unconscionability is to be determined at the time of the entry of the parties' Judgment for Dissolution of Marriage; Petitioner denies the other allegations of paragraph fourteen.

WHEREFORE, the Petitioner Betsy Dynako, who is now known as Betsy Zacate, by and through her attorney Thomas H. Joens, prays for the following relief:

A. That Respondent's Motion to Modify Support be denied.

B. For attorney's fees, Court costs and expenses made necessary by responding to and defending against Respondent's Motion to Modify Support.

C. For such other and further relief as equity deems just.

BETSY ZACATE

THOMAS H. JOENS

CERTIFICATION

I, BETSY ZACATE, state that I am the Petitioner in the above-captioned case, that I have read the above and foregoing Response to Respondent's Motion to Modify Support, and that under penalties as provided by Section 5/1-109 of the Illinois Code of Civil Procedure, Petitioner states that the allegations contained herein are true and correct to the best of her knowledge and belief.

BETSY ZACATE

Atty. No. 50696
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5590402

#50696

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-DOMESTIC RELATIONS DIVISION

IN RE: THE MARRIAGE OF	)	
	)	
BETSY DYNAKO, n/k/a	)	
	)	
BETSY ZACATE,	)	
	)	
Petitioner,	)	
and	)	NO.: 15 D 2531
	)	
STEPHEN DYNAKO,	)	
	)	
Respondent.	)	

RESPONSE TO RESPONDENT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO MODIFY SUPPORT

NOW COMES the Petitioner BETSY DYNAKO, who is now known as BETSY ZACATE, by and through her attorney THOMAS H. JOENS, and as and for Petitioner's Response to Respondent's Memorandum of Law in Support of Motion to Modify Support, states to the Court as follows:

RESPONSE TO SECTION 1.a OF RESPONDENT'S MEMORANDUM OF LAW

In Section 1.a. of Respondent's Memorandum of Law, Respondent claims that the portion of the parties' Judgment for Dissolution of Marriage that provides that maintenance is non-modifiable should be disregarded because it allegedly does not

comply with the terms of the Section 502(f) of the Illinois Marriage and Dissolution of Marriage Act. After setting forth in the Judgment the maintenance amounts that Respondent will be required to pay Petitioner, the specific language in the parties' Judgment for Dissolution of Marriage states as follows: "Said maintenance payments shall be non-modifiable pursuant to Section 502(f) of the Illinois Marriage and Dissolution of Marriage Act."

Respondent cites the language of Section 502(f) of the I.M.D.M.A. that states that that "if the parties do not provide that maintenance is non-modifiable in amount, duration, or both, then those terms are modifiable upon a substantial change of circumstances."

There are several problems with Respondent's argument.

First of all, the plain language of the parties' Judgment for Dissolution of Marriage must control. It was clearly the intention of the parties to make maintenance from Respondent to Petitioner non-modifiable, the parties' Judgment does just that, and to suggest otherwise is ludicrous.

Because the parties' Judgment for Dissolution does, in fact, provide that Respondent's maintenance obligation is non-modifiable pursuant to the terms of Section 502(f) of the I.M.D.M.A., it is not necessary to recite the language of 502(f) in the Marital Settlement Agreement in order for the terms of 502(f) to control. Respondent fails to cite any specific cases which stand for the proposition that stating in a Judgment for Dissolution of Marriage that maintenance payments "shall be non-modifiable pursuant to Section 502(f) of the Illinois Marriage and Dissolution of Marriage Act" is

insufficient to actually make such maintenance payments non-modifiable. It is a novel argument, it is also disingenuous, and said argument must fail.

The case of In re Marriage of Scott, 205 Ill.App. 3d 561, 150 Ill.Dec. 868, 563 N.E.2d 995, 1990 Ill.App. LEXIS 1722 (Ill.App.Ct. 4th Dist. 1990) stands for the proposition that maintenance agreements may be modified or terminated under circumstances stated in statutory provisions, unless the parties' intent is clearly manifested in such agreement to limit or preclude such judicial modification or termination (emphasis added). In this case, the parties clearly intended to make Respondent's maintenance payments to Petitioner non-modifiable.

In the case of In re Marriage of Goldberg, 282 Ill.App.3d 997, 218 Ill.Dec. 272, 668 N.E.2d 1104 (Ill.App. 1 Dist. 1996), the Court held that a settlement that is legal and binding on its face is presumed valid, and that this presumption can only be overcome by proving through clear and convincing evidence that there was fraud in inducement, fraud in execution, mutual mistake, or mental incompetence. Respondent has not presented clear and convincing evidence of any of these defenses.

The Court in In re Marriage of Brent, 263 Ill.App.3d 916, 200 Ill.Dec. 799, 635 N.E.2d 1382 (Ill.App. 4 Dist. 1994) states that where parties to a dissolution of marriage case enter into settlement agreements which alters the Court's ability to terminate and modify maintenance, the terms of the agreements take precedence over the statutory conditions upon which maintenance may normally be terminated or modified. In this case, the parties entered into a Marital Settlement Agreement which prevents the Court from stopping or altering Respondent's obligation to pay maintenance to Petitioner.

In addition, Section 502(f) of the I.M.D.M.A. states that the terms of maintenance are modifiable "upon a substantial change of circumstances." Even if the Court were to accept that maintenance can be modified when the parties have specifically agreed that maintenance is non-modifiable, presumably a substantial change of circumstance would have to be one where Respondent's ability to pay has **decreased.**

However, Respondent acknowledges in his Motion to Modify Support that he was "without any substantial income for almost a year at the time of the Judgment." Respondent states in his Affidavit that "**he had earnings of less than $3,000 per year in 2016 and 2017**" (emphasis added), and that beginning in January of 2018, Respondent began "**earning $3,000 per month**" (emphasis added). Based on these representations of Respondent, starting in January of 2018 **Respondent began earning at least twelve times as much income as he earned in 2016 and 2017.**

Section 502(f) of the I.M.D.M.A. does not stand for the proposition that a party who has received an increase of at least twelve times the income that a party had at the time of the entry of their Judgment for Dissolution of Marriage, would allow that party to qualify for a **reduction** in maintenance payments.

It is interesting that Respondent cites Section 502(f) of the Illinois Marriage and Dissolution of Marriage Act, but Respondent fails to justify the argument that a person making substantially more than they were making at the time of the entry of their Judgment for Dissolution of Marriage, can use this increase in income to attempt to reduce their obligation to pay maintenance.

RESPONSE TO SECTION 1.b OF RESPONDENT'S MEMORANDUM OF LAW

As set forth above, Petitioner's position is that the language of the parties' Judgment for Dissolution of Marriage in reference to Respondent's maintenance payments to Petitioner is clear and unambiguous, that the language in the Judgment complies with Section 502(f) of the Illinois Marriage and Dissolution of Marriage Act, and that Respondent has failed to cite any cases that specifically address the issue of the modifiability of maintenance payments when the parties' use the language contained in their Judgment for Dissolution of Marriage.

RESPONSE TO SECTION 1.b.i. OF RESPONDENT'S MEMORANDUM OF LAW

As set forth above, the plain language of the parties' Judgment for Dissolution of Marriage provides for the non-modifiability of maintenance payments. Respondent chose to represent himself in these dissolution of marriage proceedings, as he was more than capable of doing. Respondent had a Bachelor's Degree and a Master's Degree (both from Loyola University in Chicago) at the time of the entry of the parties' Judgment for Dissolution of Marriage. In addition, Respondent had about nine years of employment with BMO Harris as a Vice President in Risk Management.

To suggest that Respondent didn't need to "worry about the legalese of these papers" (the parties' Judgment for Dissolution of Marriage), as is stated in Respondent's Memorandum of Law, is either insulting to Respondent's intelligence, and/or is insulting to Respondent's common sense. Is Respondent saying that he didn't bother to read the paperwork because it wasn't important enough for him to determine what he was agreeing to? Did Respondent not have time to read the documents, even though he was unemployed at the time of the entry of the parties' Judgment for Dissolution of Marriage? If Respondent did read the documents, did Respondent not understand the plain language in the parties' Judgment for Dissolution of Marriage? Is Respondent denying that the terms of the Agreement were negotiated between Petitioner and Respondent?

As part of the setting of the prove-up of this case, on January 29, 2016 Respondent signed a Stipulation and Request to Hear Uncontested Cause form; Petitioner signed this form as well. The Stipulation states, in pertinent part, as follows: "We, the undersigned parties, STIPULATE AND AGREE that all matters pending between us have been settled, agreed and compromised, freely and voluntarily after full disclosure, and we hereby REQUEST that this cause be heard as an uncontested matter. Did Respondent fail to read this sentence before he signed the Stipulation? Is it Respondent's position that all matters between Petitioner and him were not settled when Respondent signed the Stipulation? Did Respondent not understand what this sentence means? Or did Respondent disagree with this sentence, but Respondent went ahead and signed the Stipulation anyway?

On January 29, 2016 Respondent signed the Marital Settlement Agreement that was prepared by Petitioner's attorney. This Agreement states, in pertinent part, that:

"Accordingly, each party represents and warrants that:

2. He or she has carefully reviewed the terms and provisions of this Agreement and has a full and complete understanding of the legal consequences thereof;
3. He or she has entered into this Agreement freely and voluntarily, without imposition of force, duress, coercion, or undue influence from any source;
4. The other party has made no representations or warranties as an inducement to enter into this Agreement, other than as set forth in writing within the terms of this Agreement; and
5. The terms and provision of this Agreement are fair and equitable to each of the parties in light of the respective and collective circumstances of the parties."

Is it Respondent's position that he did not carefully review the Marital Settlement Agreement, and this language in particular, before he signed the Agreement? Is it Respondent's position that he read this language but did not understand it? Is it Respondent's position that he was forced or coerced into signing the Marital Settlement Agreement, and that he did not sign the Agreement freely and voluntarily? Or is Respondent's position that he read this language, understood the language, disagreed with the language, but Respondent signed the Marital Settlement Agreement anyway?

RESPONSE TO SECTION 1.b.ii. OF RESPONDENT'S MEMORANDUM OF LAW

As set forth above, the language in the parties' Judgment for Dissolution of Marriage clearly provides that Respondent's maintenance payments to Petitioner are non-modifiable in nature. There was no "hiding" by Petitioner of the non-modifiability clause as it pertains to Respondent's maintenance payments to Petitioner. If a person

with Respondent's educational and employment background did not understand the documents placed before him before he signed those documents, including the Judgment for Dissolution of Marriage with attached Marital Settlement Agreement, or if Respondent chose not to read those documents before he signed them, he did so at his own peril. Petitioner should not be punished for Respondent's conduct under the circumstances, whether Respondent's conduct can be characterized as reckless, nonsensical, and/or unbelievable.

RESPONSE TO SECTION 1.c OF RESPONDENT'S MEMORANDUM OF LAW

Respondent states that "a non-modifiable maintenance award creates an awesome, ferocious super-judgment." Respondent further states in his Memorandum that "There is no other financial judgment in the civil court system with the same force as a non-modifiable maintenance award."

In reference to Respondent's first statement about a non-modifiable maintenance award being an "awesome, ferocious super-judgment," frankly, it is unclear what this characterization really means. As a result, the accuracy of this statement cannot be commented on.

Concerning the second statement, that a non-modifiable maintenance award has more force than any "other financial judgment in the civil court system," such a conclusion is not admitted or denied by Petitioner.

In any event, these statements by Respondent are irrelevant and ultimately not useful in deciding the issues that are before this Court.

RESPONSE TO SECTION 2 OF RESPONDENT'S MEMORANDUM OF LAW

Respondent's characterization of the Marital Settlement Agreement as "unconscionable" begs the questions of whether Respondent's position is that he did not read the Agreement before Respondent signed it, whether Respondent was somehow tricked into signing the Agreement, and/or whether Respondent did not understand the Agreement before he signed it. Did Respondent sign the Marital Settlement Agreement "with his eyes wide open" to the terms of the Agreement, or did Respondent decide that it was not necessary for him to review the Agreement before Respondent signed it?

Presumably when this case was proved up, Judge David Haracz made the finding that the terms of the Marital Settlement Agreement were fair and equitable, and were not unconscionable. If the terms of this Agreement were so unconscionable, wouldn't Judge Haracz have ordered Petitioner's attorney to make changes to the Marital Settlement Agreement before the parties' Judgment for Dissolution of Marriage was entered?

The terms of the parties' Marital Settlement Agreement were negotiated by the parties before the Agreement was entered. There was give and take by the parties, before an Agreement was finally arrived at.

It may be true that Respondent was told that he did not need to go to Court for the prove-up, but this is typical. In a great many Cook County, Illinois dissolution of

marriage cases, if the necessary paperwork has been signed by both parties (as it had in this case), only the Petitioner is required to attend the prove-up of the case, although the Respondent can attend the prove-up if they choose to do so.

Respondent states that "Petitioner entered a judgment very different from that which she had told Respondent was being drafted."

First of all, the Petitioner did not enter the Judgment – Judge Haracz did.

Secondly, if the terms of the parties' Marital Settlement Agreement were so different than what the parties had discussed and negotiated between themselves, what stopped Respondent from reading the Agreement before he signed it? Again, was Respondent too busy to read the Agreement before he signed it? Was the Agreement too complicated for Respondent to understand? Where is the deception on Petitioner's part, which is alleged by Respondent? Is it Petitioner's fault that Respondent signed the Agreement without reading it first, if that is what actually happened? None of these scenarios make any sense.

Did Petitioner force Respondent to sign the Agreement without reading it? Did Petitioner only show Respondent the signature page and nothing else, and Respondent signed the Agreement anyway? Could Respondent not understand the plain language of the Agreement?

Respondent is blaming his signature on the Marital Settlement Agreement as being a combination of Petitioner's deception and Respondent's naiveté. Again, was Respondent too naïve to read the Agreement before he signed it? Was Respondent too unintelligent to understand the plain language of the Agreement? What prevented

Respondent from having an attorney review the Agreement with Respondent before he signed the document?

The fact that there was no court reporter present at the prove-up simply means that the parties had reached an agreement and that Respondent was not in default. Under the circumstances a court reporter is not required. This has nothing to do with any alleged misconduct on the part of Petitioner.

Respondent fell behind in his maintenance payments to Petitioner within two years of the entry of the parties' Judgment for Dissolution of Marriage (which was on February 8, 2016), and Petitioner filed her original Petition for Rule to Show Cause Petition against Respondent on November 7, 2017.

If Respondent believed that the terms of the parties' Judgment for Dissolution of Marriage were so unconscionable, Respondent could have filed a Petition under Section 2-1401 of the Illinois Code of Civil Procedure within two years of the entry of the Judgement for Dissolution of Marriage, which is, of course, a final Judgment. Respondent chose not to file a 2-1401 Petition within the requisite period of time, for whatever reason.

Respondent does mention that the Court should make a finding that the parties' Judgment for Dissolution of Marriage (entered over three years ago) should be determined "to be unconscionable and therefore subject to reformation," retroactive to the filing of Respondent's Motion to Modify on December 20, 2018, or two years prior to the filing of Respondent's Motion to Modify.

However, Respondent does not have a proper 2-1401 Petition on file, nor does Respondent explain how the Court has the power to grant Respondent's Motion to

Modify retroactive to a period of time two years prior to the time of the filing of the Motion to Modify. A 2-1401 Motion *might have been considered by the Court* if filed by Respondent by February 8, 2018, but certainly not now, even if there was such a pleading prepared correctly by Respondent. There is not a proper 2-1401 Petition pending on behalf of Respondent at this time.

What statute allows Respondent to attempt to change the terms of the parties' Judgment for Dissolution of Marriage, by filing a Motion to Modify two years and ten months after the entry of the Judgement for Dissolution of Marriage? Respondent does not cite a proper statute for this requested relief.

Section 507(b) of the Illinois Marriage and Dissolution of Marriage Act does not state what Respondent says that it states. Section 507(b) has to do with records maintained by the clerk of the court, and has nothing to do with maintenance being a series of Judgments. Respondent is not citing 507(b) of the I.M.D.M.A. correctly.

RESPONSE TO SECTION 3 OF RESPONDENT'S MEMORANDUM OF LAW

As set forth above, and verified by the pleadings submitted to the Court by Respondent, the substantial change of circumstances which has occurred since the entry of the parties' Judgment for Dissolution of Marriage is that Respondent's income has increased by at least twelve times. Such an increase in income is not the substantial

change of circumstances necessary to reduce Respondent's maintenance payments to Petitioner.

Respondent's characterization of the maintenance payments that were awarded in this case were as a result of Respondent being "a sucker to have believed the soothing blandishments of Petitioner" is insulting to Petitioner, and is not a correct characterization of what took place in this case. Petitioner and Respondent negotiated a settlement of the maintenance issue, and Respondent later had "buyer's remorse" over what he had agreed to.

Rather than filing a 2-1401 Petition within two years of the entry of the parties' Judgment for Dissolution of Marriage if he felt so wronged, Respondent chose to file a Motion to Modify without citing a proper statutory basis for the relief requested in the Motion. Respondent cites an improper statute concerning the maintenance payments being a series of Judgments, and Respondent mischaracterizes the agreement reached by the parties as amounting to misconduct engaged in by Petitioner.

Although Respondent is a sophisticated and highly educated businessman, his argument seems to be that either Petitioner tricked him into agreeing to do something he did not want to do, Respondent did not read the Marital Settlement Agreement before he signed it, or Respondent did not understand the terms of the Marital Settlement Agreement. Respondent has not proved any of these positions.

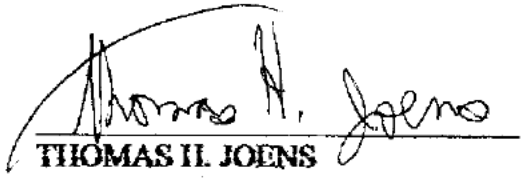
It is inappropriate for Respondent to state that Petitioner had Respondent sign the Marital Settlement Agreement "through deceit." Where was the deceit? Clearly, the parties signed the Marital Settlement Agreement on separate dates, and while they were

at separate locations. Respondent presumably had the time and the ability to review the Marital Settlement Agreement before he signed the document.

Again, the questions remain the same. Did Respondent read the Marital Settlement Agreement before he signed it? Did Respondent understand the terms of the Marital Settlement Agreement before he signed it?

If Respondent chose to sign the Marital Settlement Agreement without reading the document, where is the deceit on Petitioner's part? And if Respondent did not understand the terms of the Marital Settlement Agreement before he signed it, where is the deceit on Petitioner's part? How is Petitioner responsible for Respondent's conduct, and why should Petitioner be blamed for Respondent's actions?

BETSY ZACATE:
By her attorney:



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Attorney #38787

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-DOMESTIC RELATIONS DIVISION

IN RE: THE FORMER MARRIAGE OF

Betsy Dynako
PETITIONER

AND

Stephen Dynako,
RESPONDENT

No: 2015 D 002531

Calendar 61

RESPONDENT'S REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION TO MODIFY SUPPORT

Respondent Stephen Dynako, by his attorney, August Staas, submits this Reply Memorandum of Law in support of his Motion to Modify Maintenance.

FACTS

The relevant facts are undisputed.

Betsy does not deny that she wrote the letter establishing that, at the time she filed for divorce, she knew Stephen had given notice resigning his banking job and was beginning a career in spiritual counseling. Indeed, as she states in the letter, his new condition of financial insecurity was the sole reason she was filing for divorce.

Betsy does not deny that, at the time the judgment of dissolution was entered, she knew Stephen was unemployed and had been unemployed for almost a year.

Betsy does not deny that she knew Stephen's assets were largely limited to retirement accounts with a balance insufficient to pay the maintenance called for in the settlement agreement.

Betsy does not deny that, at the time the judgment was entered, she knew Stephen would be unable to pay the maintenance unless either his consulting business was highly successful or he found a new highly paid job in banking. Indeed, this understanding is the entire basis of the letter she wrote to Respondent before she filed for divorce.

Thus, Petitioner does not deny that she has known all along that Respondent's ability to pay maintenance was necessarily dependent on his increasing his earnings in the future.

The judgment calls for Stephen to pay $60,000 per year for four years, then $50,000 in year 5, $40,000 in year 6, $30,000 in year 7, and $20,000 in year 8, for a total of $380,000. This was all to be paid after taxes.

It is undisputed that Stephen was current in his payments for the first fourteen months following the judgment. As Betsy acknowledged in her Petition for Rule to Show Cause, he paid $70,000 beginning March 25, 2016, and making his last payment on April 25, 2017. He made those payments even though, as Betsy well knew, he had no job and no income, and he was making those payments by cashing in the retirement accounts he'd been awarded in the divorce judgment, and he stopped making the payments only when his retirement account had been exhausted.

It is a matter of record that Stephen has turned over to Betsy his remaining defined-benefit retirement accounts in the amount of $8,953.52 and $63,457.91[1]

It is undisputed that Stephen has made hundreds of contacts seeking re-entry into the banking and risk management industry, including submitting resumes directly to corporations and seeking

[1] Stephen has a third defined-benefit retirement account from IBM. Betsy has declined to take this, as it can't be cashed in for immediate cash, being payable only upon attainment of retirement age.

placement through executive recruiters, and that he has not obtained even one face-to-face interview.

It is undisputed that the executive recruiters have told him that he will be unable to find employment in the banking industry because he has been unemployed for several years and doesn't have the necessary familiarity with the current state of regulations.

It is undisputed that Stephen's career as a counselor has not provided income sufficient to pay the maintenance called for by the judgment. He has obtained employment doing consulting work designing transformational education programs. In addition, he has been taking whatever extra jobs he can find, including shoveling snow and cutting grass.

It is undisputed that Stephen has no car, no health insurance, and is giving Betsy half of his before-tax income, and is now penniless, living as best he can on whatever is left of his $1,500 monthly income after he pays taxes both on the payments he makes to Betsy and on his own after-Betsy income.

In sum, it is undisputed that Stephen's compliance with the judgment is, as a practical matter, impossible.

Betsy doesn't make any argument as to how Stephen is to comply with the judgment.

At each court appearance on this matter, Betsy has simply been urging this Court to put Stephen in jail, to "lock him up."

The Non-Modifiability Provision

a. <u>The provision must explicitly specify that it applies to duration, amount, or both.</u>

In her submissions, Petitioner nowhere addresses the failure of the maintenance provision to comply with the statutory requirements.

Instead, Petitioner repeats and repeats the conclusory assertion that the parties intended to make maintenance non-modifiable[2].

The statute unambiguously sets forth explicit requirements that must be met to render a maintenance obligation non-modifiable.

To be effective, a non-modifiability provision must designate one of three options: that maintenance is to be non-modifiable either 1) in amount, or 2) in duration, or 3) in both. 750 ILCS 5/502(f).

The statute further unambiguously and explicitly states the consequences of failure to make such designation: **If the parties do not provide that maintenance is non-modifiable *in amount, duration, or both*, then those terms are modifiable upon a substantial change of circumstances.** 750 ILCS 5/502(f).

Petitioner does not argue that the supposed non-modifiability provision designates one of those three options. She does not argue that the statute does not specify the consequences of the failure to designate one of those three options. She does not argue that the statute is erroneously cited or that it does not mean what it says. She simply pretends this provision of the statute does not exist.

By pretending this statutory provision does not exist, Petitioner is actually insisting the Court write into the marital settlement agreement the designation the parties did not make. Petitioner is insisting the Court pretend the parties wrote into the marital settlement that maintenance is to be non-modifiable ***in both duration and amount***.

---

[2] The sole basis for this assertion is that Respondent's signature appears on the marital settlement agreement. But this is hardly conclusive. Respondent emphatically denies that he intended to make the maintenance obligation non-modifiable. As is shown in Respondent's submissions and affidavit, Respondent relied on Petitioner's assurances that the marital settlement agreement was simply a rendering into legalese of their written prior self-written agreement, which specifically stated that support was to be modifiable upon notice upon a change in Respondent's circumstances.

But this would invert all the long-standing rules of the interpretation of contracts. This would say that a contract which fails to meet the requirements of the law is to be given the interpretation most unfavorable to the party who didn't write it, and who was not represented by counsel, and most favorable to the party who did write it and who was represented by counsel.

Petitioner misinterprets Respondent's discussion of the maintenance obligation as a super-contract.

Respondent's argument is this:

The legislature had a good reason to insert the requirement that the parties specify whether a maintenance obligation is to be non-modifiable as to amount, duration, or both. The legislature well knew that a maintenance obligation is an extraordinarily hard obligation. It is not dischargeable in bankruptcy. The debtor can have assets seized that would be exempt from collection in any other kind of collection action. The debtor can even be imprisoned for failure to pay.

The statute prohibits enforcement of any agreement that child support is non-modifiable. The statute allows agreement to make maintenance non-modifiable, but before that agreement can be effective, the statute imposes this requirement: that the agreement specify whether it is non-modifiable in amount, duration, or both.

The additional requirement provides a safeguard against the unintended harshness of a non-modifiable maintenance obligation.

The marital settlement agreement makes no such specification. The statute explicitly states the consequences of that failure to make that specific designation. Maintenance is modifiable upon a showing of change of circumstances.

Petitioner does not deny that Respondent is destitute. She does not deny that he is utterly unable to make the maintenance payments. Yet she has been continually insisting that the harsh, impossible terms of the judgment be fully enforced against Respondent, to the extent of insisting he be locked up. There is to be no deviation from the harshness of the contract as it is applied to Respondent.

Yet Petitioner insists the requirements of the law should not be applied to her. She insists this Court should simply pretend the statutory requirements don't exist.

The hypocrisy and cruelty of Petitioner's position should not prevail.

According to the clear language of the statute, the non-modifiability provision is of no effect. The maintenance obligation is modifiable.

2. There Has Been a Substantial Change in Circumstances

It is indisputable that Respondent cannot comply with the maintenance obligation.

Petitioner does not argue otherwise.

Instead, Petitioner responds with two arguments.

First, Petitioner argues that the maintenance obligation was impossible at the time it was executed, and is no more impossible now than it was then.

This is an extraordinary argument coming from someone who has been insisting this Court imprison Respondent.

But, of course, Petitioner's argument is untrue.

First, Respondent's circumstances have changed, in that, as time has gone on and he ages and his skills and experience atrophy and the hole in his resume grows longer and longer, the

likelihood of his finding employment that will allow him to make the exorbitant maintenance payments called for in the judgment recedes.

Second, the relative financial positions of the parties have changed. Petitioner has received more than $150,000 in maintenance payments from Respondent. Respondent is penniless.

Petitioner makes a second argument. Petitioner argues that, at the time of the judgment, Respondent was unemployed, but now he is employed full-time. Ergo, Petitioner argues, Respondent's financial circumstances have not deteriorated, but, rather, have improved.

But there are two problems with this argument.

First, this argument ignores the fact that compliance with the judgment required Stephen's income to increase dramatically. The fact that is has stabilized at $3,000 per month is necessarily a turn for the worse from the necessary expectation at the time of the judgment.

Second, the statute does not require the change in circumstance to be negative. Again, Petitioner is asking this Court to infer into the statute language that does not exist but that would be favorable to her.

3. Respondent is asking this Court to modify the judgment, not vacate the judgment.

Respondent is asking this Court to modify the maintenance obligation effective from the date of filing of the Motion to Modify. Respondent is not asking the Court to vacate the judgment from the date of entry of the judgment.

Respondent has met the statutory requirements. Respondent has shown that the purported non-modifiability provision is, by the explicit, unambiguous terms of the statute, is of no effect, and the maintenance obligation is modifiable upon a showing of change of circumstance.

Respondent has shown a change of circumstances. He is destitute and cannot pay the maintenance obligation, and after a year of diligent searching, there is no reasonable basis for believing he will ever be able to meet the maintenance obligation.

Therefore, this Court should modify his maintenance obligation, reducing his maintenance obligation to a level consistent with the statutory guidelines, effective the date of filing of his motion to modify maintenance.

For the past year, Respondent has been paying $1,500 per month toward his maintenance obligation arrearage, plus 50% of any additional earnings he's received from odd jobs.

Interest continues to accrue on the arrearage at the rate of 9% per year. In addition, this Court has ordered Stephen will be required to pay Betsy's tax liability and penalties on the pension funds Stephen has turned over to her. In addition, Betsy's lawyer intends to seek attorneys' fees.

Stephen has paid $163,900 in maintenance as of June 25, 2019. Including interest, principal, and tax penalties, but not counting taxes on the QDRO funds and Betsy's attorneys' fees, Stephen still owes $15,450 for maintenance accrued as of the date he filed his motion to modify maintenance.

If maintenance is not modified retroactive to the date of filing, he will owe an additional $35,000 plus interest.

If maintenance is not modified prospectively, but continues to accrue, he will owe an additional $220,000 in maintenance, plus interest, taxes, and attorney's fees.

The payment he has been making of $1,500 per month – which constitutes half of his pre-tax income – will not even cover the interest payments. His debt will never be reduced. It will continue to increase until he dies.

CONCLUSION

The non-modifiability provision is unlawful and unenforceable. The circumstances have changed.

This Court should modify the maintenance order, reducing Respondent's obligation to a level designated by the statutory guidelines, effective on the date of filing of the motion to modify.

August Staas, attorney for Respondent

August Staas
Attorney for Respondent
350 South Northwest Highway #300
Park Ridge, IL 60068
312-233-2732
august@staas.com
Atty # 38787

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Stephen Dynako

August Staas
Attorney for Petitioner
350 South Northwest Highway #300
Park Ridge, IL 60068
312-233-2732
august@staas.com
Atty # 38787

Order (Rev. 02/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

BETSY ZACATE
v.
STEPHEN DYNAKO

No. 15 D 2531

ORDER

THIS CAUSE COMING TO BE HEARD ON RESPONDENT'S MOTION TO MODIFY MAINTENANCE, AND THE COURT BEING ADVISED,

IT IS ORDERED!

1. THE MOTION TO MODIFY MAINTENANCE IS SET FOR HEARING ON THE LIMITED QUESTION OF WHETHER THE NON-MODIFIABILITY PROVISION OF RESPONDENT'S MAINTENANCE OBLIGATION IS ENFORCEABLE. THE QUESTION OF WHETHER THERE HAS BEEN A CHANGE IN CIRCUMSTANCES WILL BE RESERVED PENDING THE COURT'S RULING ON THE ENFORCEABILITY OF THE NON-MODIFIABILITY PROVISION. HEARING IS SET FOR 11:00 AM ON SEPTEMBER 17, 2019.
2. THE PARTIES MAY BE DEPOSED ON THE LIMITED QUESTION OF THE CIRCUMSTANCES OF THE NEGOTIATION OF THE MARITAL SETTLEMENT AGREEMENT, RESERVING INQUIRY REGARDING CHANGE OF CIRCUMSTANCES, WITHIN 30 DAYS.

4/18/19

Associate Judge
David E. Haracz
JUL 25 2019
Circuit Court – 1878

ENTERED:

Dated: _____, _____

Attorney No.: 38781
Name: AUGUST STAAS
Atty. for: RESPONDENT
Address: 350 S. NORTHWEST HWY #300
City/State/Zip: PARK RIDGE IL 60068
Telephone: 312-233-2732

DH

Judge Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

A100

Notice of Appeal **(08/21/19) CCG 0256 A**

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY **DEPARTMENT,** DOMESTIC RELA **DIVISION/DISTRICT**

BETSY DYNAKO

Plaintiff/ ○ Appellant ◉ Appellee

v.

STEPHEN DYNAKO

Defendant/ ◉ Appellant ○ Appellee

Reviewing Court No.: _____

Circuit Court No.: 2015 D 002531

NOTICE OF APPEAL

(Check if applicable. See IL Sup. Ct. Rule 303(a))(3).

☐ Joining Prior Appeal ☐ Separate Appeal ☐ Cross Appeal

Appellant's Name: STEPHEN DYNAKO

◉ Atty. No.: 38787 ARDC No.: 6189545
○ Pro Se 99500

Name: August Staas

Atty. for (if applicable):
Stephen Dynako

Address: 350 S Northwest Highway #350

City: Park Ridge

State: IL Zip: 60068

Telephone: 312-233-2732

Primary Email: august@staas.com

Appellee's Name: BETSY DYNAKO

◉ Atty. No.: 50696 ARDC No.: _____
○ Pro Se 99500

Name: THOMAS JOENS

Atty. for (if applicable):
Betsy Dynako

Address: 33 North LaSalle Street, Suite 2000

City: Chicago

State: IL Zip: 60602

Telephone: 312-541-8889

Primary Email: joenslaw@comcast.net

An appeal is taken from the order or judgment described below:

Date of the judgment/order being appealed: 9/17/19

Name of judge who entered the judgment/order being appealed: David Haracz

Notice of Appeal **(08/21/19) CCG 0256 B**

Relief sought from Reviewing Court:

Reverse order of trial court, reverse finding that the Court is barred from entertaining a motion to modify support by Section 502(f) of the Marriage and Dissolution of Marriage Act, and such other relief as may be just.

I understand that a *"Request for Preparation of Record on Appeal"* form (CCA N025) must be completed and the initial payment of $110 made prior to the preparation of the Record on Appeal. The Clerk's Office will not begin preparation of the ROA until the Request form and payment are received. Failure to request preparation of the ROA in a timely manner, i.e., at least 30 days before the ROA is due to the Appellate Court, may require the Appellant to file a request for extension of time with the Appellate Court. A *"Request for Preparation of Supplemental Record on Appeal"* form (CCA N023) must be completed prior to the preparation of the Supplemental ROA.

To be signed by Appellant or Appellant's Attorney

CLERK OF THE CIRCUIT COURT OF COOK COUNTY OFFICE LOCATIONS

- ○ Richard J Daley Center
  50 W Washington
  Chicago, IL 60602
- ○ District 2 - Skokie
  5600 Old Orchard Rd
  Skokie, IL 60077
- ○ District 3 - Rolling Meadows
  2121 Euclid
  Rolling Meadows, IL 60008
- ○ District 4 - Maywood
  1500 Maybrook Ave
  Maywood, IL 60153
- ○ District 5 - Bridgeview
  10220 S 76th Ave
  Bridgeview, IL 60455
- ○ District 6 - Markham
  16501 S Kedzie Pkwy
  Markham, IL 60428
- ○ Domestic Violence Court
  555 W Harrison
  Chicago, IL 60607
- ○ Juvenile Center Building
  2245 W Ogden Ave, Rm 13
  Chicago, IL 60602
- ○ Criminal Court Building
  2650 S California Ave, Rm 526
  Chicago, IL 60608

Daley Center Divisions/Departments

- ○ Civil Division
  Richard J Daley Center
  50 W Washington, Rm 601
  Chicago, IL 60602
  Hours: 8:30 am - 4:30 pm
- ○ Chancery Division
  Richard J Daley Center
  50 W Washington, Rm 802
  Chicago, IL 60602
  Hours: 8:30 am - 4:30 pm
- ◉ Domestic Relations Division
  Richard J Daley Center
  50 W Washington, Rm 802
  Chicago, IL 60602
  Hours: 8:30 am - 4:30 pm
- ○ Civil Appeals
  Richard J Daley Center
  50 W Washington, Rm 801
  Chicago, IL 60602
  Hours: 8:30 am - 4:30 pm
- ○ Criminal Department
  Richard J Daley Center
  50 W Washington, Rm 1006
  Chicago, IL 60602
  Hours: 8:30 am - 4:30 pm
- ○ County Division
  Richard J Daley Center
  50 W Washington, Rm 1202
  Chicago, IL 60602
  Hours: 8:30 am - 4:30 pm
- ○ Probate Division
  Richard J Daley Center
  50 W Washington, Rm 1202
  Chicago, IL 60602
  Hours: 8:30 am - 4:30 pm
- ○ Law Division
  Richard J Daley Center
  50 W Washington, Rm 801
  Chicago, IL 60602
  Hours: 8:30 am - 4:30 pm
- ○ Traffic Division
  Richard J Daley Center
  50 W Washington, Lower Level
  Chicago, IL 60602
  Hours: 8:30 am - 4:30 pm

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT
COOK COUNTY, ILLINOIS

BETSY DYNAKO
Plaintiff/Petitioner

Reviewing Court No: 1-19-2116
Circuit Court No: 2015D002531
Trial Judge: DAVID HARACZ

v.

STEPHEN DYNAKO
Defendant/Respondent

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2020 IL App (1st) 192116

No. 1-19-2116

Fourth Division
December 3, 2020

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

In re MARRIAGE OF	)	
BETSY DYNAKO,	)	Appeal from the Circuit Court of Cook County.
Petitioner-Appellee,	)	No. 2015 D 002531
and	)	The Honorable David Haracz,
STEPHEN DYNAKO,	)	Judge Presiding.
Respondent-Appellant.	)	

PRESIDING JUSTICE GORDON delivered the judgment of the court, with opinion. Justices Hall and Lampkin concurred in the judgment and opinion.

OPINION

¶ 1 The instant appeal arises from respondent Stephen Dynako's motion to modify the maintenance he was ordered to pay to petitioner Betsy Dynako (now known as Betsy Zacate) in connection with the dissolution of their marriage. Since their marital settlement agreement contained a clause providing that maintenance was nonmodifiable, the trial court found that it lacked the authority to modify respondent's maintenance obligation and, accordingly, denied respondent's motion. Respondent appeals, claiming that the marital settlement agreement did not render his maintenance obligation nonmodifiable. For the reasons that follow, we affirm.

¶ 2 BACKGROUND

¶ 3 On March 20, 2015, petitioner filed a petition for dissolution of marriage, alleging that the parties had been married in 2000 and had no children. Petitioner was 41 years old and a self-employed photographer, while respondent was 48 years old and was a vice president at a bank and was also a part-time psychotherapist.

¶ 4 On March 24, 2015, petitioner filed a motion for entry of an agreed order regarding various temporary matters, including temporary maintenance for petitioner.[1] Petitioner claimed that the parties agreed, *inter alia*, (1) that petitioner be granted exclusive possession of the marital residence, (2) that respondent pay petitioner $3741 per month in temporary maintenance, and (3) that respondent have access to borrow against his 401(k) and the ability to withdraw up to 50% of its current value of $170,000. On April 2, 2015, the trial court entered the agreed order.

¶ 5 On February 8, 2016, the trial court entered a judgment for dissolution of marriage, which incorporated a marital settlement agreement entered into by the parties.[2] The marital settlement agreement set forth provisions for maintenance, as follows:

> "2.1 [Respondent] agrees to pay [petitioner] for her maintenance the sum of $5,000.00 (Five Thousand Dollars) per month for FOUR YEARS (48 months). The first monthly payment of $5,000.00 shall be paid on the 25th day of the month immediately following the entry of this Judgment herein and a like monthly payment of $5,000.00 to be paid on the same day each succeeding month thereafter. [Respondent] shall continue to pay maintenance to [petitioner] for an additional FOUR

[1] The motion did not set forth the amount of either party's income at the time.

[2] Neither the marital settlement agreement nor the judgment for dissolution of marriage set forth any facts as to the amount of either party's income at the time.

YEARS (a total of 8 years of maintenance shall be paid-in-full) in decreasing amounts as follows:

a) Year 5: $50,000 annually ($4,166 per month);

b) Year 6: $40,000 annually ($3,333 per month);

c) Year 7: $30,000 annually ($2,500 per month);

d) Year 8: $20,000 annually ($1,666 per month).

Said maintenance payments shall be non-modifiable pursuant to Section 502(f) of the Illinois Marriage and Dissolution of Marriage Act. [Respondent] shall make said payments to [petitioner] by depositing monies into the jointly held Chase Bank account ***."

¶ 6 On November 7, 2017, petitioner filed a petition for rule to show cause, claiming that between May 2017 and October 2017, respondent had paid only $700 in maintenance payments, instead of the $30,000 he was required to pay. Petitioner further claimed that respondent had the ability to comply with the terms of the dissolution judgment but willfully chose not to do so. Respondent did not file a response to the petition for rule to show cause. On January 24, 2018, the trial court entered an order finding respondent to be in indirect civil contempt for failure to make $43,800 in maintenance payments as of the date of the order, plus statutory interest. As part of its findings, the court found that respondent "has not given any legally sufficient reasons for failure to comply with said order, even though [he] had, and still has, the means to comply with said order, and that [respondent's] failure to comply with said order is willful and contumacious." The court also ordered respondent committed to Cook County jail until he paid at least $10,000 to purge his contempt, with the mittimus stayed until the next court date.

¶ 7 At the next court date, on March 27, 2018, the trial court entered an order requiring respondent to complete a job diary, as well as to remain current on his maintenance payments. The court further stayed respondent's mittimus until the next court date in May. On May 29, 2018, the court found that, while respondent had been ordered to pay petitioner $10,000 by that date, he had paid only $5000. The court continued to require respondent to prepare a job diary, and also ordered respondent to prepare a financial affidavit. The court ordered respondent to pay $10,000 by the next court date, cautioning that "failure to make said payment may result in a body attachment."

¶ 8 On June 15, 2018, respondent filed a petition to modify the court's May 29, 2018, order, claiming that he did not have the financial resources to comply with the court's order because he was earning less than $3000 per month working as a "management consultant" and had withdrawn all funds from his 401(k) to make his maintenance payments. On July 6, 2018, the trial court entered an order ordering respondent to pay petitioner $1500 on the first of each month toward his maintenance obligation until further order of the court, and ordered respondent to "exercise his fullest efforts on obtaining employment sufficient to meet his [maintenance] obligation." The court also ordered respondent to tender his financial affidavit,[3] and allowed petitioner to conduct discovery as to respondent's financial condition. On September 13, 2018, respondent withdrew his petition to modify the court's May 29 order.

¶ 9 On October 18, 2018, the trial court entered an order on the previously-entered rule to show cause, finding that "[t]he previous finding of contempt against Respondent remains in full force and effect." The court further ordered that respondent was "under a continuing obligation to

[3] While a notice of service provides that a financial affidavit and job search diary were subsequently sent to petitioner, neither of these documents are included in the record on appeal.

prepare job diaries and to pay Petitioner at least $1500.00 per month towards Respondent's obligation to pay maintenance to Petitioner. Respondent is also obligated to seek additional part-time employment."

¶ 10 On December 20, 2018, respondent filed a petition to modify the February 8, 2016, judgment for dissolution of marriage by terminating or modifying his maintenance obligation. While the marital settlement agreement provided that the maintenance payments were "non-modifiable pursuant to Section 502(f) of the Illinois Marriage and Dissolution of Marriage Act," respondent claimed that the maintenance obligation was not truly nonmodifiable because it did not specifically provide "that the non-modifiability applies to amount, duration, or both." Respondent claimed that a change in circumstances necessitated the modification of his maintenance obligation, as he had been without steady income for several years and his financial circumstances had "deteriorated to the point of desperation." Respondent further claimed that the maintenance obligation was unconscionable.

¶ 11 Respondent claimed that, at the time that petitioner filed the petition for dissolution of marriage, respondent was without formal employment and was "seeking to build a consulting business from scratch." He further claimed that he had been without steady income for over three years, and "his lack of steady employment for such an extended period of time coupled with his advancing age has compromised his ability to find employment at a level sufficient to support the maintenance obligation." Respondent claimed that the only "substantial" assets awarded to him in the dissolution judgment were his retirement accounts, which had been liquidated and turned over to petitioner to be applied towards his maintenance obligation. Respondent claimed that his gross income was $3000 per month, of which $1500 was being paid to petitioner. Respondent further claimed that he had been "diligently seeking more

lucrative employment," but had been unsuccessful. He had also been seeking "odd jobs" and turning over the income from those jobs to petitioner. Respondent claimed that the maintenance obligation as written was impossible for him to perform and that petitioner "has substantial assets and is well able to earn an income to support herself."

¶ 12 Attached to his motion was respondent's affidavit, in which he averred that in 2014, respondent was working in banking, earning approximately $140,000 per year. By March 2015, he had learned that his job was in jeopardy and feared he was going to lose his job. Since he had a master's degree in pastoral counseling, he believed his "best move forward was to develop a career in pastoral counseling." He left his job at the bank in April 2015, after giving notice in March 2015. After leaving his job at the bank, he had earnings of less than $3000 in 2016 and 2017. Beginning in 2018, he contracted with a not-for-profit agency, earning $3000 per month "producing transformational educational programs based in spiritual principles." He also performed several "one-off projects," which earned him an additional $6000.

¶ 13 Respondent averred that he had been searching for a job in the financial sector that would give him earnings equivalent to his former earnings, but had been unsuccessful. He had also contacted numerous executive recruiters, all of whom had advised him that it would be difficult to place him at the level of his former compensation, as he had been out of the financial sector for four years and lacked current experience. Respondent averred that his work with the not-for-profit had earned him a positive reputation and a number of professional connections, leading him to believe that his "most promising prospect for rebuilding a career" was to continue working in that sector.

¶ 14 In response to respondent's motion, petitioner claimed that the terms of the maintenance obligation were expressly made nonmodifiable in the marital settlement agreement. Petitioner

also claimed that respondent had been formally employed at the time that petitioner filed her petition for dissolution of marriage, contrary to his contention. Petitioner claimed that, at the time, she was supportive of respondent's efforts to build a consulting business, but that her support was predicated on respondent being able to continue to support her, as she made clear to him. Petitioner claimed that respondent quit his previous job voluntarily, because he was unhappy with it, and denied that respondent ever told her that he was about to lose his job. Petitioner also claimed that, in the dissolution judgment, respondent was awarded half of the funds in his 401(k) and three pension plans, received $17,000 from petitioner for a buyout of his interest in the parties' condominium, and was awarded "various bank accounts, stocks, stock options, and other assets in Respondent's name only which were not specifically known to Petitioner at the time of the entry of the parties' Judgment for Dissolution of Marriage."

¶ 15 Petitioner further claimed that, contrary to respondent's assertion, she suffered from a variety of health issues that made it difficult for her to earn an income; she was considered disabled by the State of Illinois and received employment assistance from the Illinois Department of Rehabilitation Services. Petitioner had not had regular part-time employment since Thanksgiving 2018, and had never been employed on a full-time basis.

¶ 16 On July 25, 2019, the trial court set respondent's motion for hearing "on the limited question of whether the non-modifiability provision of respondent's maintenance obligation is enforceable." The court further ordered that the question of whether there had been a change in circumstances would be reserved pending the court's ruling on the enforceability of the non-modifiability provision.

¶ 17 On September 17, 2019, the parties came before the court for a hearing, and agreed that the sole issue before the court was whether the maintenance obligation was modifiable under

section 502(f) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/502(f) (West 2018)). After hearing the parties' arguments, the court found that it "does not have the ability to modify Respondent's obligation to pay Petitioner maintenance as set forth in the parties' Judgment for Dissolution of Marriage entered on February 8, 2016, pursuant to Section 502(f) of the Illinois Marriage and Dissolution of Marriage Act." Accordingly, the court denied respondent's motion, further finding that there was no just reason to delay enforcement or appeal of the order.

¶ 18 On October 15, 2019, respondent filed a notice of appeal, and this appeal follows.

¶ 19 ANALYSIS

¶ 20 On appeal, we are presented with one question: whether the maintenance obligation in this marital settlement agreement is modifiable, even when respondent claims he cannot pay through a change in circumstances.[4] The answer to this question requires us to interpret the language of a statute, namely, section 502 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/502 (West 2018)), as well as the language of the marital settlement agreement.

¶ 21 "The fundamental objective of statutory construction is to ascertain and give effect to the intent of the legislature." *1010 Lake Shore Ass'n v. Deutsche Bank National Trust Co.*, 2015 IL 118372, ¶ 21 (citing *Bettis v. Marsaglia*, 2014 IL 117050, ¶ 13). "The most reliable indicator of legislative intent is the statutory language, given its plain and ordinary meaning." *1010 Lake Shore Ass'n*, 2015 IL 118372, ¶ 21 (citing *State Building Venture v. O'Donnell*, 239 Ill. 2d

[4] While our background section set forth the claims made by the parties below concerning the purported change in circumstances, as noted, the parties and the court agreed that the legal issue regarding modifiability would be resolved prior to considering any evidence as to changed circumstances. Accordingly, any evidence or argument concerning that issue is not contained in the record on appeal and we make no comment as to whether respondent would be able to prevail on such a claim.

151, 160 (2010)). "A reasonable construction must be given to each word, clause, and sentence of a statute, and no term should be rendered superfluous." *1010 Lake Shore Ass'n*, 2015 IL 118372, ¶ 21 (citing *Slepicka v. Illinois Department of Public Health*, 2014 IL 116927, ¶ 14). " '[W]hen statutory language is plain and certain the court is not free to give it a different meaning.' " *Kalkman v. Nedved*, 2013 IL App (3d) 120800, ¶ 12 (quoting *In re Estate of Hoehn*, 234 Ill. App. 3d 627, 629 (1992)). "[A] court may not depart from the plain statutory language by reading into it exceptions, limitations, or conditions not expressed by the legislature." *Kalkman*, 2013 IL App (3d) 120800, ¶ 12 (citing *In re Estate of Ellis*, 236 Ill. 2d 45, 51 (2009)). The interpretation and applicability of legislation are questions of law that are reviewed *de novo*. *Lewis v. Lead Industries Ass'n*, 2020 IL 124107, ¶ 36. *De novo* consideration means we perform the same analysis that a trial judge would perform. *XL Specialty Insurance Co. v. Performance Aircraft Leasing, Inc.*, 2019 IL App (1st) 181031, ¶ 62.

¶ 22 Additionally, a marital settlement agreement is construed in the same manner as any other contract, and a court must ascertain the parties' intent from the language of the agreement. *Blum v. Koster*, 235 Ill. 2d 21, 33 (2009). The interpretation of a marital settlement agreement is also reviewed *de novo* as a question of law. *Blum*, 235 Ill. 2d at 33.

¶ 23 Respondent first claims that the language in the marital settlement agreement was insufficient to render the maintenance obligation nonmodifiable under the Act. However, before considering the merits of respondent's argument, we must first determine the version of the Act that applies. The Act has undergone substantial amendment over the last several years and, in fact, section 502, the section that governs marital settlement agreements, was amended

during the pendency of the parties' dissolution proceedings.[5] The version that was in effect at the time of the filing of the petition for dissolution of marriage provided, in subsection (f):

> "Except for terms concerning the support, custody or visitation of children, the judgment may expressly preclude or limit modification of terms set forth in the judgment if the agreement so provides. Otherwise, terms of an agreement set forth in the judgment are automatically modified by modification of the judgment." 750 ILCS 5/502(f) (West 2014).

¶ 24 However, section 502 was amended by Public Act 99-90, which became effective on January 1, 2016. 750 ILCS 5/502 (West Supp. 2015). This amendment changed subsection (f) to provide:

> "Child support, support of children as provided in Section 513 after the children attain majority, and parental responsibility allocation of children may be modified upon a showing of a substantial change in circumstances. The parties may provide that maintenance is non-modifiable in amount, duration, or both. If the parties do not provide that maintenance is non-modifiable in amount, duration, or both, then those terms are modifiable upon a substantial change of circumstances. Property provisions of an agreement are never modifiable. The judgment may expressly preclude or limit modification of other terms set forth in the judgment if the agreement so provides. Otherwise, terms of an agreement set forth in the judgment are automatically modified by modification of the judgment." 750 ILCS 5/502(f) (West Supp. 2015).

[5] We note that, since the entry of the judgment of dissolution, section 502 has been amended twice more, with the most recent amendment becoming effective January 1, 2018. See 750 ILCS 5/502 (West 2016); Pub. Act 100-422 (eff. Jan. 1, 2018).

This is the version of the Act that was in effect at the time of the entry of the judgment for dissolution. Thus, prior to considering the merits of respondent's arguments, we must first determine which version of the Act applies—the version in effect at the time of the filing of the petition or the version in effect at the time of the entry of the judgment for dissolution of marriage.

¶ 25 Section 801 of the Act, which was also amended as part of Public Act 99-90, discusses applicability of the Act to proceedings in various stages of completion. 750 ILCS 5/801 (West Supp. 2015). Courts have used this section to determine whether the prior version of the Act governs, or whether the new version of the Act is applicable.[6] See, *e.g.*, *In re Marriage of Kasprzyk*, 2019 IL App (4th) 170838, ¶ 38 (finding new Act applicable); *In re Marriage of Benink*, 2018 IL App (2d) 170175, ¶ 29 (finding prior version of Act applicable); *In re Marriage of Carstens*, 2018 IL App (2d) 170183, ¶ 29 (finding new Act applicable); *In re Marriage of Ruvola*, 2017 IL App (2d) 160737, ¶ 13 (finding new Act applicable). As relevant to the instant case, section 801(b) provides that "[t]his Act applies to all pending actions and proceedings commenced prior to its effective date with respect to issues on which a judgment has not been entered." 750 ILCS 5/801(b) (West Supp. 2015). As noted, the petition for dissolution of marriage was filed on March 20, 2015, prior to the January 1, 2016, effective date of the amendment. However, the judgment for dissolution of marriage was entered on February 8, 2016, after the effective date of the amendment. Since "a judgment [had] not been

[6] As noted, the Act has been further amended since the amendment at issue. However, when we refer to the "new" or "amended" Act, we refer to the version of the Act that was effective January 1, 2016.

entered" prior to the effective date of the amended Act, under section 810(b), the new Act controls.[7] 750 ILCS 5/801(b) (West Supp. 2015).

¶ 26 We turn, then, to consideration of the requirements of section 502(f) of the Act, as applicable to the case at bar. As noted, section 502(f) provides, in relevant part, that "[t]he parties may provide that maintenance is non-modifiable in amount, duration, or both. If the parties do not provide that maintenance is non-modifiable in amount, duration, or both, then those terms are modifiable upon a substantial change of circumstances." 750 ILCS 5/502(f) (West Supp. 2015). The marital settlement agreement in the case at bar provided:

> "2.1 [Respondent] agrees to pay [petitioner] for her maintenance the sum of $5,000.00 (Five Thousand Dollars) per month for FOUR YEARS (48 months). The first monthly payment of $5,000.00 shall be paid on the 25th day of the month immediately following the entry of this Judgment herein and a like monthly payment of $5,000.00 to be paid on the same day each succeeding month thereafter. [Respondent] shall continue to pay maintenance to [petitioner] for an additional FOUR YEARS (a total of 8 years of maintenance shall be paid-in-full) in decreasing amounts as follows:
>
> a) Year 5: $50,000 annually ($4,166 per month);

[7] We note that, in *In re Marriage of Cole*, 2016 IL App (5th) 150224, ¶ 9, the court found that amended maintenance guidelines did not apply to a case in which the marriage, separation, and dissolution hearing all occurred prior to the amendment's effective date and the only action that occurred after the effective date was the actual entry of the judgment itself. However, in the case at bar, the parties entered into the marital settlement agreement, and came before the court for a hearing on the dissolution petition, after the January 1, 2016, effective date of the amendment at issue. Additionally, we must note that *Cole* did not include any discussion of section 801 of the Act or its impact on the issue and that at least one court has reached the opposite conclusion on similar facts based on the application of section 801. See *Ruvola*, 2017 IL App (2d) 160737, ¶ 13 ("We note first that the trial court was correct to apply the amendments to the [Act] that became effective on January 1, 2016. [Citation.] The amendments became effective after the closing of proofs in this case but before the judgment was rendered. [Citation.]").

b) Year 6: $40,000 annually ($3,333 per month);

c) Year 7: $30,000 annually ($2,500 per month);

d) Year 8: $20,000 annually ($1,666 per month).

Said maintenance payments shall be non-modifiable pursuant to Section 502(f) of the Illinois Marriage and Dissolution of Marriage Act. [Respondent] shall make said payments to [petitioner] by depositing monies into the jointly held Chase Bank account ***." (Emphasis added.)

We must determine whether the above language renders respondent's maintenance obligation nonmodifiable under the amended section 502(f).

¶ 27 Respondent contends that, because the marital settlement agreement did not expressly state that his maintenance obligation was "non-modifiable in amount, duration, or both" (750 ILCS 5/502(f) (West Supp. 2015)), then it was modifiable, despite the fact that the agreement expressly states that the obligation is nonmodifiable. In other words, respondent's argument is that the words "amount, duration, or both" must appear in the agreement in order to render the obligation nonmodifiable. We do not find this argument persuasive.

¶ 28 We note that it does not appear that this language has been interpreted by our courts since it was added to the Act, nor have we discovered any legislative history explaining why the language of section 502(f) was amended. Accordingly, we consider this issue as one of first impression. Respondent's position is that the amendment imposed a new requirement in order to render a maintenance obligation nonmodifiable: that the agreement expressly provide that the obligation is nonmodifiable as to amount, duration, or both. However, comparing the original version and the amended version reveals no such thing.

¶ 29 As noted, the original version of section 502(f) provided:

> "Except for terms concerning the support, custody or visitation of children, the judgment may expressly preclude or limit modification of terms set forth in the judgment if the agreement so provides. Otherwise, terms of an agreement set forth in the judgment are automatically modified by modification of the judgment." 750 ILCS 5/502(f) (West 2014).

Under this version, the only limitations on the parties' ability to modify a judgment were (1) that child-related provisions could not be made nonmodifiable, and (2) that the parties could "expressly preclude or limit modification of terms set forth in the judgment." 750 ILCS 5/502(f) (West 2014).

¶ 30 The amended version went into further detail, specifically addressing several types of terms commonly included in marital settlement agreements:

> "Child support, support of children as provided in Section 513 after the children attain majority, and parental responsibility allocation of children may be modified upon a showing of a substantial change in circumstances. The parties may provide that maintenance is non-modifiable in amount, duration, or both. If the parties do not provide that maintenance is non-modifiable in amount, duration, or both, then those terms are modifiable upon a substantial change of circumstances. Property provisions of an agreement are never modifiable. The judgment may expressly preclude or limit modification of other terms set forth in the judgment if the agreement so provides. Otherwise, terms of an agreement set forth in the judgment are automatically modified by modification of the judgment." 750 ILCS 5/502(f) (West Supp. 2015).

Thus, the new version (1) specified the circumstances under which child-related provisions could be modified and (2) provided that property provisions were never modifiable. 750 ILCS

5/502(f) (West Supp. 2015). Additionally, as relevant to the instant appeal, the new version specifically addressed maintenance, providing that the parties could agree (1) that maintenance was nonmodifiable in amount, (2) that maintenance was nonmodifiable in duration, or (3) that maintenance was nonmodifiable in both amount and duration. 750 ILCS 5/502(f) (West Supp. 2015).[8] In other words, the maintenance provision allowed the parties to make maintenance as a whole nonmodifiable or to select a single aspect of the obligation to make nonmodifiable. If the parties did not agree that maintenance was nonmodifiable, either in whole or in part, then maintenance was modifiable upon a substantial change of circumstances. 750 ILCS 5/502(f) (West Supp. 2015).

¶ 31 In the case at bar, the clear language of the marital settlement agreement shows that the parties intended that respondent's maintenance obligation be nonmodifiable under section 502(f). The agreement set forth a schedule of payments to be made over eight years, and expressly provided that "[s]aid maintenance payments shall be non-modifiable pursuant to Section 502(f) of the Illinois Marriage and Dissolution of Marriage Act." We cannot imagine a clearer expression of an intent to make the obligation nonmodifiable—not only did the agreement expressly provide that the obligation was nonmodifiable, but it cited the applicable provision of the Act.

¶ 32 Respondent's contention that the agreement was required to expressly include the terms "amount, duration, or both" has no support in the language of the statute. If the legislature had intended that the parties were required to specifically state whether the nonmodifiability applied to amount, duration, or both, it certainly could have said so. Indeed, it included such a

[8] The new version also kept in place the catchall provision that the parties could expressly preclude or limit modification of other terms set forth in the judgment. 750 ILCS 5/502(f) (West Supp. 2015).

requirement in the very same section: section 502(f) provides that the dissolution judgment "may expressly preclude or limit modification of other terms set forth in the judgment if the agreement so provides." 750 ILCS 5/502(f) (West Supp. 2015). Instead, it is clear that the legislature was intending to provide parties with *more* flexibility as to maintenance provisions, allowing them to make portions of the obligation nonmodifiable while leaving others modifiable. There is nothing to suggest that the failure to specifically designate that the nonmodifiability applied to the maintenance obligation as a whole renders the obligation modifiable. This would be the height of exalting form over substance—because the parties failed to use the magic words, the obligation would become modifiable even despite a clear expression that they intended it to be nonmodifiable. There is no suggestion that the legislature intended such a result, and we will not infer it from the language of the amended Act. In the absence of any evidence that the nonmodifiability was intended to apply to only one aspect of the maintenance obligation, the trial court properly determined that the parties intended that the entire maintenance obligation was nonmodifiable. Consequently, the trial court properly denied respondent's motion to modify the judgment.

¶ 33 CONCLUSION

¶ 34 The trial court's denial of respondent's motion to modify the dissolution judgment is affirmed, where the language of the marital settlement agreement provided that the maintenance obligation was nonmodifiable under section 502(f) of the Act, and where there is nothing to suggest that the nonmodifiability provision was intended to apply to only one aspect of the maintenance obligation.

¶ 35 Affirmed.

No. 1-19-2116

Cite as:	*In re Marriage of Dynako*, 2020 IL App (1st) 192116
Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 2015 D 002531; the Hon. David Haracz, Judge, presiding.
Attorneys for Appellant:	August Staas, of Park Ridge, for appellant.
Attorneys for Appellee:	Betsy Dynako, n/k/a Betsy Zacate, *pro se*.

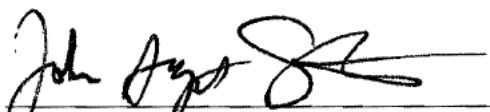
No: 126835
IN THE SUPREME COURT OF ILLINOIS

In re Marriage of Betsy Dynako,	)	On leave to appeal from the
	)	Appellate Court of Illinois, First District
Petitioner - Appellee	)	No. 1-19-2116
	)	
and	)	There on appeal from the Circuit Court
	)	of Cook County, Illinois, Domestic Relations
Stephen Dynako,	)	Division,
	)	No. 2015 D 002531
Respondent - Appellant	)	
	)	Honorable David Haracz, Judge Presiding

NOTICE OF ELECTRONIC FILING

To: Colin Harvey Dunn
chd@colindunnlaw.com

I, John August Staas, attorney for Respondent/Appellant Stephen Dynako, state that on April 28, 2021, I electronically filed the attached Appellant's Brief with the Clerk of the Supreme Court of the State of Illinois.

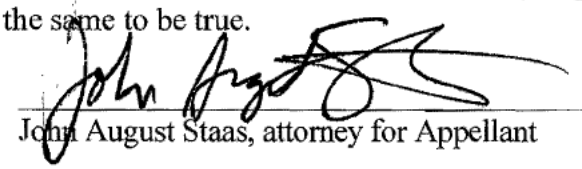


John August Staas, attorney for Appellant

CERTIFICATE OF SERVICE

The undersigned, being first duly sworn on oath. deposes and states that on April 28, 2021, I caused true and correct copies of the foregoing Notice of Filing together with the Appellant's Brief, to be served upon the above party by Odyssey at the email address above.

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



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